

**Housing Element of the Master Plan
and
Fair Share Plan**

**Borough of Berlin
Camden County, New Jersey**

September 15, 2008

*Housing Element of the Master Plan
and
Fair Share Plan*

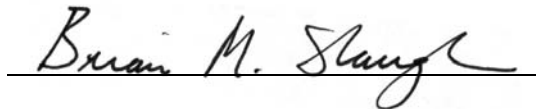
**BOROUGH OF BERLIN
COUNTY OF CAMDEN**

**Prepared pursuant to *N.J.S.A. 40:55D-28b(3)*,
and *N.J.S.A. 52:27D-301 et seq.***


**Adopted by the Berlin Borough Planning Board
September 15, 2008**

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Architecture

Planning

Landscape Architecture

INTRODUCTION

The Housing Element and Fair Share Plan are intended to address Berlin Borough's affordable housing obligation for the second round and subsequent third round. The Housing Element is a part of the Master Plan of the Borough. The Fair Share Plan consists of implementation documents and appendices. Together, these two documents will be referred to as the "housing plan". This document incorporates the demographic information of the 2007 Housing Element, adopted on June 25, 2007 since no additional data is available.

Berlin Borough was subject to a first round builder's remedy lawsuit. Subsequently on April 20, 1989, the Borough received a first round final judgment of repose from Superior Court. This judgment of repose provided six years of legal protection against builder's remedy lawsuits. On September 12, 1997 jurisdiction for meeting the Borough's fair share housing obligation was transferred to the New Jersey Council on Affordable Housing (COAH). One and half years later on March 3, 1999, the Borough received second round substantive certification from COAH. This second round substantive certification also protected the Borough from builder's remedy lawsuits for a period of six years.

On March 3, 2005, the Borough filed for an extension of second round substantive certification, pursuant to *N.J.A.C. 5:95-15.2*. However, COAH denied the extension request because the Borough had not fully complied with the terms of its second round substantive certification. Specifically, the Borough had granted approval to three COAH or Court approved inclusionary housing sites without any affordable housing components. The denial of the extension for substantive certification left the Borough vulnerable to builder's remedy lawsuits. A builder's remedy lawsuit is generally meant as a vehicle to address a shortfall in the capacity of a housing plan.

On March 13, 2006, Nexus Properties Inc. filed a builder's remedy lawsuit against the Borough and proposed construction of 600 units, including a substantial number of affordable units, on Block 1700, Lots 1 and 7. On May 27, 2008 the Superior Court found in favor of Nexus Properties and awarded a builder's remedy consistent with the complaint entered on behalf of Nexus Properties. The court order also directed the Borough to file a compliant housing plan 90 days from its date, subsequently extended for an additional 30 days on August 15, 2008. This document fulfills the court order.

On May 18, 2006, Armstrong Capital LLC filed a builder's remedy lawsuit against the Borough. The Borough is in the process of settling with Armstrong Capital. The current draft Settlement Agreement, which has been agreed to in principle by both parties,



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provides for 80 housing units of which 20 will be affordable, renovation of 3 retail buildings located on the site and the construction of 4,000 square feet of new retail space.

The Borough will comply with the submittal deadline; however, it does so under protest. Furthermore, the Borough maintains its right to appeal the Nexus Properties Inc. award of the builder's remedy lawsuit.

Because the Borough wishes to appeal the Nexus decision, this Housing Element will present two scenarios: the first will include development of the Nexus site for inclusionary development consisting of 600 total units, of which 120 will be family rental units; the second scenario will not include development of the Nexus site. The housing plan thus has two parts that should be read separately. Since the two options are identical except for excluding the Nexus Properties site in Option 2, there is a substantial amount of repetition between the two scenarios. The intent of the two scenarios is to provide a Housing Element and Fair Share Plan which is in compliance with COAH's rules regardless of the final outcome of the Nexus site litigation. The Borough reserves the right to amend the plan consistent with the court order or subsequent decision as circumstances warrant.



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Option 1. Berlin Borough Third Round Housing Element

Including Development of the Nexus Properties LLC Tract for 600 Dwelling Units

BERLIN'S AFFORDABLE HOUSING OBLIGATION

Berlin's affordable housing obligation consists of three components, the rehabilitation obligation, the prior round obligation and the third round obligation. The sum of these three components, which Berlin must satisfy, is 209 affordable housing units. This sum was calculated as follows:

- Rehabilitation Obligation: 24 units
- Prior Round Obligation: 154 units
- Third Round Obligation: 31 units

THE REHABILITATION OBLIGATION

The rehabilitation obligation is an estimate of the number of deteriorated housing units occupied by low or moderate income households within the Borough, based on Census data. COAH has calculated Berlin's rehabilitation obligation to be 24 units.

THE PRIOR ROUND OBLIGATION

The prior round obligation is the sum of the new construction obligation of the first round (1987-1993) and the second round (1993-1999). This figure is the number of affordable housing credits the Borough must provide. COAH has calculated Berlin's prior round obligation to be 154 units.

THE THIRD ROUND OBLIGATION

The third round obligation is the new construction obligation of the third round from 1999 through 2018. However, the effective period for the third round – the time period in which the Borough must address its obligation – is compressed and consists of the years 2004 through 2018. The third round affordable housing obligation is based on the "growth share" generated by household and job projections for the compressed period. These projections were developed and adopted by COAH on May 6, 2008. Each municipality is required to provide one affordable housing unit for every four regular households projected and one affordable housing unit for every 16 jobs projected. The affordable housing obligation which the Borough must plan to satisfy in this Housing Element is based on the household and job ratios as applied to the COAH projections.



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- Household Projection: 472 dwellings
Growth Share Obligation from Household Projection: **94.40 units** (472 / 5)
- Employment Projection: 886 jobs
Growth Share Obligation from Job Projection: **55.38 units** (886 / 16)

COAH also requires that if a municipality's actual growth exceeds these projections, the higher number will need to be addressed through additional affordable units.

COAH's substantive rules, *N.J.A.C. 5:97-2.4(a)* permit a municipality to exclude from the projected growth share obligation the affordable and market rate units in prior round affordable housing sites that will be developed during the third round (2004 through 2018). Market rate units shall be excluded at a rate of four times the number of affordable units where a 20% affordable housing set-aside is required. Furthermore, *N.J.A.C. 5:97-2.4(b)* permits the exclusion of nonresidential development that was required to specifically address a portion of a municipality's prior round obligation. The projects with exclusions must have received credit in a first or second round certified Plan or a court judgment of compliance or must be eligible for credit toward a municipality's prior round obligation. The Borough has four developments which are eligible to be excluded:

- The Simone Tract. This is a prior round inclusionary housing site which has not yet developed, but is anticipated to be developed during the third round. The site was included in the original second round certified Housing Element; however, it was included at a 10% set-aside. The Borough is proposing to increase the set-aside to 20%. It is anticipated that 64 units will be developed on the site, of which 13 will be affordable. Accordingly, 64 units shall be excluded from the residential projections. The original site is a portion of Block 400, Lot 3.
- The Armstrong Tract. This site was the subject of a second and third round builder's remedy lawsuit. The current Settlement Agreement stipulates 80 units, of which 20 shall be affordable family rental dwellings, and the construction of a 4,000 square foot retail building, as well as renovation of existing buildings on the site. Portions of the shopping center will be demolished to permit the construction of the residential component of the project. The construction of the additional retail building is directly related to the 25% affordable housing set-aside, which is greater than the prior round standard set-aside of 15% for rental developments. The Borough has a 24 unit gap in satisfying its prior round obligation. As such, the 20 affordable units and associated 60 market units and 4,000 square foot retail building shall be excluded from the projected third round growth share.
- The Nexus Tract. This site was the subject of a second and third round builder's remedy lawsuit. The Order approving the development permits the construction of a



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total of 600 dwelling units. The Plaintiff, through its counsel, has subsequently indicated an intention to construct family rental housing. Accordingly, it is anticipated the Plaintiff will provide a 20% affordable housing set-aside, which will result in the construction of 120 family rental affordable units. In this plan, 600 units from this site have been excluded.

- Haverhill/Lonaconing/Lonaconing East. The Haverhill/Lonaconing/Lonaconing East (hereafter “Haverhill”) development is a result of a first round builder’s remedy lawsuit. The settlement for the site included the development of the Haverhill age-restricted inclusionary development and the unrestricted Carriage Stop and Lonaconing developments, as well as a community shopping center of up to 250,000 sf. This retail development will consist of a Wal-Mart hypermarket that also includes two pad sites. The Haverhill residential development consists of 211 market units and 40 affordable rental units, a 15.94% set-aside. Pursuant to *N.J.A.C. 5:97-2.4(b)*, when calculating actual growth, the Borough will exclude all of the affordable units and the market rate units at a rate of 5.275 (less than the maximum of 5.667 specified in the Substantive Rules) dwellings per affordable residence since the affordable units are for rent. The Borough issued 197 certificates of occupancy for Haverhill between January 1, 2004 and December 31, 2007, subject to final verification. As such, all 197 units may be excluded. Additionally, the 380.29 jobs created by the 214,833 square foot Wal-Mart and two retail pad sites totaling 8,700 square foot will be excluded from the jobs projection.

The total third round obligation which this Housing Element and Fair Share Plan must satisfy is 31 units. See Table 1, below.

Table 1. Residential Exclusions from the Third Round Obligation – Option 1.

Projected Residential Units	472
Exclusions	
Armstrong	-80
Nexus	-600
Simone	-64
Haverhill	-197
Total	-941
Units Creating Growth Share	-469
Residential Growth Share	0



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Table 2. Employment Exclusions from the Third Round Obligation – Option 1.

Projected Jobs	886
Armstrong	6.8
Haverhill & Wal-Mart	380.01
Total	386.81
Jobs Creating Growth Share	499.19
Nonresidential Growth Share	31.20

The sum of Tables 1 and 2 is 31.2, or 31 affordable housing units, rounded.

As briefly noted above, COAH's substantive rules at *N.J.A.C. 5:97-2.2(e)* require that a municipality only be required to provide affordable housing in proportion to its actual growth, but plan for the higher of either projected growth or actual growth. Adjustments in the plan will occur based on the implementation monitoring that will be required every two years. In this document the Borough is utilizing COAH projected allocation adjusted for the allowed exclusions. Restated, should Berlin's actual growth generate an affordable housing obligation less than that generated by the projections, the Borough will only be required to satisfy the lower obligation related to actual growth. Similarly, if the Borough's actual growth generates a higher affordable housing obligation than the projections, the Borough will have to satisfy that higher number. Due to a number of factors, the Borough's COAH allocation is unlikely to be reached.

When measuring job creation, employment is based on the square footage of non-residential development that has occurred; jobs are not counted directly. Square footage is categorized into different "use groups" that define how buildings are used in the Uniform Construction Code use group. COAH has established the required number of affordable housing units per square footage (as well as jobs per 1,000 sf.) in Appendix D of their substantive rules. These multipliers relate non-residential floor area to the number of jobs created. For example, every 1,000 sf. of office space creates 2.8 jobs and every 1,000 square feet of retail space creates 1.7 jobs. The required number of affordable housing units is based on the square footage that it takes to generate 16 jobs.

SCARCE RESOURCE CONSTRAINTS

On March 7, 2007 an Order declaring that sanitary sewer capacity was a scarce resource constraint was issued. The Court found that there was a lack of sufficient sewer capacity for the Borough to satisfy their affordable housing obligation. It went on to prevent the



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Borough from “granting or making commitments to grant connections to the Sewerage Infrastructure”. However, the order also exempted three land use categories:

- Any property presently served by a failing septic system;
- Schools and municipal buildings;
- Inclusionary developments which are an element of a *Mount Laurel* compliance plan approved by the Council on Affordable Housing or the Superior Court prior to the institution of this action.

The Order prevents the Borough from granting sewer capacity to most of the unbuilt affordable housing projects now proposed in the Housing Plan since they are new in this document. These projects would likely be the first in line for any newly created capacity. However, the need for these affordable housing projects will be limited since the household and job growth generating a growth share obligation also cannot be provided sewer capacity. As it becomes available, the Borough will provide sewer capacity to the affordable housing developments in this Housing Element and Fair Share Plan which were not previously approved by COAH or Superior Court. Appendix A contains the Consent Order Declaring Sewerage Infrastructure a Scarce Resource and Imposing Constraints. Sufficient public water capacity exists for meeting the plan requirements.

SATISFACTION OF THE REHABILITATION OBLIGATION

Berlin has fully satisfied its 24 unit rehabilitation obligation. The Camden County Home Improvement Program (Division of Community Development) operates a rehabilitation program for owner-occupied units in Berlin Borough, as well as the rest of the County. This program has completed a total of 30 rehabilitations since April 1, 2001. The County’s program is funded using HUD Community Development Block Grants (CDBG). All rehabilitated units have 99-year affordability controls, pursuant to *N.J.A.C. 5:97-6.2*. The County’s Home Program does not comply with the requirement that rehabilitation programs be available to renter occupied households, *N.J.A.C. 5:97-6.2(b)6*; however, the units were completed prior to the adoption of this rule on May 6, 2008.

From 1997 through 2002, the Borough operated a rehabilitation program that was open to owner-occupied and renter-occupied housing units. The program was funded using HUD Community Development Block Grants (CDBG). During this time the Borough rehabilitated 14 units; however, only two units are eligible for credit since these were the only units which had a contract executed after April 1, 2000 and had liens placed on them after the rehabilitation. While the Borough continues to receive this funding, it is now used for a low-income senior transportation program. As both of these two credit-



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worthy rehabilitations were owner occupied, there were six year liens placed on the properties.

However, the average cost of these 32 rehabilitations (30 in the County Home Program and 2 in the Borough Program) is \$8,909. This figure is less than the \$10,000 average hard cost required by *N.J.A.C. 5:97-6.2(b)2*. However, the average of the most costly 24 rehabilitations is \$11,176. The Borough is only seeking credit for only the most costly 24 rehabilitations. The County's program is funded using HUD Community Development Block Grants (CDBG). Please see Appendix B for a list of units rehabilitated by the County Home Program and Appendix C for a list of units rehabilitated by the Borough program.

While the Borough did not have a rehabilitation program open to renter-occupied units during the entire time the 24 unit rehabilitation obligation was being satisfied, it was open to renter occupied units for nearly two years of this period. Furthermore, the Borough has a small renter-occupied housing stock at 17% (375) of the total occupied housing units (2,205) in 2000. The Borough requests 24 rehabilitation credits based on the small number of renter-occupied housing units, the availability of the program to renter-occupied housing units for nearly two years, the fact that the Borough rehabilitated six more units than required by the rehabilitation obligation and based on the ongoing nature of the County's Home Program.

SATISFACTION OF THE PRIOR ROUND OBLIGATION

The Borough has a 154 unit prior round obligation. However, in addition to this total number of credits which the Borough must meet, the Borough must also abide by the following limitations:

Prior Round Minimum Rental Obligation = 39 units

.25 (prior round obligation – prior cycle credits– impact of the 20% cap – impact of the 1000 unit cap) = .25 (154-0-0-0) = 38.5, rounded up to 39

Prior Round Maximum Age-Restricted = 39 units

.25 (prior round obligation + rehabilitation share – prior cycle credits – rehabilitation credits – impact of the 20% cap – impact of the 1000 unit cap) = .25 (154+24-0-24-0) = 38.5, rounded up to 39

The Borough has a number of existing affordable housing units that satisfy the prior round obligation as well as proposed housing sites that are part of builder's remedy lawsuits. Each of these is described below.



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Armstrong Capital

On May 18, 2006, Armstrong Capital, LLC, brought a second round Mount Laurel builder's remedy lawsuit against the Borough of Berlin. The site is 21.99 acres in size and is located along White Horse Pike (U.S. Route 30), Florence Avenue and Tansboro Road (Co. Route 561) on Block 1800, Lots 5, 6 and 9. The site is located in the C-2 Neighborhood Commercial zone district, which permits uses such as retail stores, offices, restaurants, health clubs, medical offices and municipal uses. A partially vacant shopping center with a K-Mart, diner and an additional free-standing retail building currently exist on the site. The site is not located in an urban center or workforce housing census tract.

The Borough is currently negotiating with Armstrong Capital, LLC. The anticipated settlement negotiations include the following components:

- A total of 80 residential rental units with a 25% set-aside for 20 affordable units (10 low-income and 10 moderate-income). The affordable units will be mixed with the market units such that the facades will be indistinguishable from the market units. The residential component will consist of 9.9 acres and will have a gross density of 8 units per acre.
- 20,000 square feet of renovated retail space containing a Dollar General store and other small stores.
- The 4,000 square foot Jersey Diner.
- A 4,000 square foot new retail pad site facing White Horse Pike.
- A 97,000 square foot K-Mart.

The affordable units will be developed and occupied in accordance with the Uniform Housing Affordability Control rules, *N.J.A.C. 5:26-1 et seq.*, including but not limited to the bedroom distribution requirements and affordability controls of at least 30 years. Additionally, the affordable units will comply with *N.J.A.C. 5:97-3.14*, accessible and adaptable affordable units. The project's affordable units will be owned by Armstrong Capital, LLC, or subsidiary company and they will be administered by a certified affordable housing administrator to be determined at a future date.

The Armstrong Capital, LLC, site provides 20 prior round affordable family rental units and no bonus credits, for a total of 20 credits contributing toward the prior round obligation.



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The site meets COAH's site suitability standards, pursuant to N.J.A.C. 5:97-3.13. The site is available, approvable, developable and suitable as detailed below:

- *The site has a clear title and is free of encumbrances which preclude development of affordable housing.* Armstrong Capital is parent of company of AC I Berlin, LLC, that owns the shopping center and there are no legal encumbrances which would preclude its development with the proposed affordable housing project.
- *The site is adjacent to compatible land uses and has access to appropriate streets.* The site has frontage on and access to three streets: approximately 700 feet of frontage along Tansboro Road, approximately 1,400 feet of frontage along Florence Avenue and nearly 800 feet of frontage along East White Horse Pike. Northeast of the site, across East White Horse Pike, is undeveloped land in the PC-2 Neighborhood Commercial district. Otherwise, the site is surrounded by a mix of residential neighborhoods and commercial properties in the C-2 Neighborhood Commercial district, Institutional district, R-1 Low Density Residential district, R-2 High Density district and R-3 Garden Apartment district.
- *Adequate sewer and water is available.* The site is located in the Borough's public water service area and is within the approved sewer service area. Adequate water capacity exists to serve the project. However, since this site was not included in a previously approved Housing Element or Fair Share Plan, the Borough may not grant capacity at this time. However, the Borough will grant a sewer connection upon additional capacity becoming available. It is anticipated that the developer of the site will make provision for any sanitary sewer capacity necessitated by the development.
- *The site can be developed in accordance with R.S.I.S.* Development of the site will be consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq.

Development of the site is consistent with the State Development and Redevelopment Plan (hereinafter the "State Plan") and the rules and regulations of all agencies with jurisdiction over the site.

- *The site is located in a "Smart Growth Planning Area".* The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1.
- *The development is not within jurisdiction of a Regional Planning Agency or CAFRA.* The site is located outside of the Pinelands, CAFRA, Highlands, or Meadowlands jurisdictions. It is across the street from lands in the Pinelands.
- *The site will comply with all applicable environmental regulations.* There are no wetlands, floodplains, steep slopes, Category One streams or contaminated sites located on the site or in the immediate vicinity.



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- *The site will not affect any historic or architecturally important sites and districts. There are no historic sites or districts located on the site or in the nearby surrounding area.*

The development is contingent on approval of a final settlement.

Carriage Stop

This development, formerly known as the Marshall Site, consists of 511 total units: 483 market units and 28 affordable rental units. The site was previously certified as part of Berlin's 1999 second round substantive certification. The site is located along Roosevelt Boulevard in Block 2201 on a 147 acre site, now consisting of many different lot numbers. The site has three points of access to Watsontown-New Freedom Road (County Route 691) and is located in the R-1A district. The R-1A district permits single family detached units, townhouses, parks and churches. The affordable units are 75% moderate income and 25% low income; additionally, there are four one-bedroom units, 16 two-bedroom units and eight three-bedroom units. The project was approved by the Court on June 23, 1989 and the final certificate of occupancy was issued prior to January 1, 2004. The site is not located in an urban center or workforce housing census tract.

The affordable units have a 20 year deed restriction. The project developer, current owner and affordable housing administrator are handled by Tim Schaeffer Communities who constructed the project.

Carriage Stop provides 28 prior round affordable family rental units, each of which is eligible for a prior round bonus credit, for a total of 56 credits contributing toward the prior round obligation.

Haverhill

Haverhill, also known as Lonaconing, is an age-restricted inclusionary housing development that includes a total of 251 housing units: 211 market units and 40 affordable rental units. The site was subject to a first round builder's remedy lawsuit and was previously certified as part of Berlin's 1999 second round substantive certification. The case's Final Judgment and Order was entered on April 20, 1989. The project received site plan approval from Superior Court on February 5, 1991; however, the approval was amended by a December 12, 2001 Order. The final certificate of occupancy was issued on October 20, 2005. The Settlement Agreement for the project included not only the 251 housing units but also a 215,000 shopping center and two pad sizes at 3,700 square feet and 5,000 square feet, respectively, for a total of 223,700 square feet of retail space. See Appendix D for this project's Court Orders and Settlement Agreement.



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Most of the residential portion of the project is located in Block 900, Lot 31, subsequently subdivided into other lots on the east side of Berlin-Cross Keys Road clustered on Sequoia Drive and Bryce Road. The eastern side of the project which includes both residential (Lonaconing East) and non-residential sections (Wal-Mart) is located in Block 2201.01, Lots 1-41, 43-55 and Block 2201.02, Lots 1-21 and Block 2201.01, Lot 42, respectively. The residential portion of Lonaconing East is approximately 12 acres with 69 units for a gross density of 5.75 dwelling units per acre. All of these units are located on Glacier Drive. The Wal-Mart parcel is 34.7 acres. Neither side of the road is located in an urban center or workforce housing census tract.

The western side of Haverhill is primarily located in the R-2 district, but with sections also in the R-1 residential and C-2 commercial districts. The C-2 district permits uses including retail stores, offices, restaurants, health clubs, medical offices and Borough uses and the R-2 district permits uses such as single-family detached units, townhouses, parks & churches. The R-1 district has been previously described. The eastern side of the project is zoned C-2 commercial and I-3 industrial.

The 40 affordable units are for rent and they consist of 20 low income and 20 moderate income households. There are 24 two-bedroom units and 16 one-bedroom units. As an age-restricted development, this project complies with the bedroom distribution requirements of the Uniform Housing Affordability Control rules. The affordable units have a 20 year deed restriction. The project developer, current owner and affordable housing administrator remain with Tim Schaeffer Communities.

Due to the prior round senior cap of 39 units, only that many units of the Haverhill development may contribute toward the prior round obligation; the remaining unit will contribute toward the third round obligation. Three of the 39 affordable senior rental units are eligible for bonus credits of .33 each; as such, the Haverhill development will contribute 40 credits toward the prior round obligation.

Nexus Tract

The Nexus Tract is a 30.79 acre site located on Block 1700, part of Lot 1. In 2006, the contract purchaser filed a second and third round Mount Laurel builder's remedy lawsuit. The Superior Court awarded a builder's remedy to Nexus Properties on May 27, 2008. While the Order for Partial Summary Judgment and Other Relief does not indicate a number of units the developer is entitled to nor does it include any findings of fact regarding the Plaintiff's proposed development, the Plaintiff's complaint indicated a desire to construct an inclusionary development of 600 units. The Plaintiff has subsequently indicated an intention to construct family rental housing. It is anticipated that the Plaintiff will provide a 20% affordable housing set-aside, which will result in the construction of 120 rental affordable units. At 30.79 acres, the proposed gross density is



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19.5 dwelling units per acre. Please see Appendix E for the site owner's commitment to constructing rental units on the site.

Determination of the site's suitability for affordable housing, particularly at the density of the approved plan, has not been established. Furthermore, the determination of the consistency of the site with the State Development and Redevelopment Plan has also not been established. Accordingly, this site is included under protest.

The site is located on the north side of Tansboro Road (County Route 561) and has approximately 900 feet of frontage. The site is located in the PARC Planned Active Residential Community district; this district permits age-restricted housing and a small amount of commercial development to serve the residents of the development. The site is not located in an urban center or workforce housing census tract.

The affordable units will be developed and occupied in accordance with the Uniform Housing Affordability Control rules, *N.J.A.C. 5:26-1 et seq.*, including but not limited to the bedroom distribution requirements and affordability controls of at least 30 years. Additionally, the affordable units will comply with *N.J.A.C. 5:97-3.14*, accessible and adaptable affordable units. The project's affordable units will be administered by a certified housing administrator to be determined at a later date.

The plaintiff has indicated that the project will be rental. Under this scenario, four of the 120 affordable units will contribute toward the prior round; the remaining 116 units will contribute toward the third round. The Nexus Tract will provide four affordable family rental units toward the prior round obligation and no bonus credits for a total of four credits.

An alternative development scenario is to create a mixed rental and for-sale project in lieu of an all rental scheme. Under this alternative development, four for-sale affordable units would be used to address the prior round. The third round obligation, as discussed in a later section, would be addressed with a mixture of for-sale and rental units from the remaining 116 affordable housing units.

Simone Tract

The Simone Tract is an inclusionary housing site which has not yet developed. The site was previously certified as part of Berlin's 1999 second round substantive certification. The second round site consisted of Block 400, part of Lot 3 and is about 12 acres in size. The site is located on the south side of Clementon Road (County Route 534). The site is currently being farmed. The site is not located in an urban center or workforce housing census tract. The site is located in the R-1 low density district which permits single



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family detached dwellings. The R-1 includes an existing density bonus for the provision of affordable housing at a 10% setaside from 2 to 2.4 units per acre and if the percentage is higher, the density increases to an allowed 2.7 units per acre. Lot sizes range from 14,250 sf. to 10,000 sf. under these different development options.

The Borough is proposing to rezone the site from the R-1 district to the R-2 district. The R-2 district is consistent with the second round substantive rules for inclusionary zoning and presumptive densities in Planning Area 2: 6 units per acre and a 20% set-aside. With this zoning, it is anticipated that the site can accommodate a total of 64 housing unit, of which 13 would be affordable units. The affordable units are intended to be family or senior for sale units. The entire site is 24.56 acres and the prior plan earmarked half of the site for inclusion development. In this plan, the size of the area identified for inclusionary development is proposed to decrease to 10.5 acres. This action increases the density to slightly more than the minimum six units per acre in accordance with the proposed rules of COAH for suburban planning areas.

The site continues to present a realistic opportunity for the construction of affordable housing, pursuant to *N.J.A.C. 5:97-6.5*. As detailed below, the site meets COAH's site suitability standards, pursuant to *N.J.A.C. 5:97-3.13*. Additionally, market conditions in the Borough are such that the site can be expected to be developed during the third round in a manner similar to other R-2 district inclusionary housing districts. Furthermore, the R-1 zoning on the site has been in place since prior to the filing of the Borough's June 2007 Third Round Housing Element and Fair Share Plan. The R-2 district, because it permits a higher density, is expected to add an incentive to develop the property.

The affordable units will be developed and occupied in accordance with the Uniform Housing Affordability Control rules, *N.J.A.C. 5:26-1 et seq.*, including but not limited to the bedroom distribution requirements and affordability controls of at least 30 years. Additionally, the affordable units will comply with *N.J.A.C. 5:97-3.14*, accessible and adaptable affordable units. Once the development is designed and approved, an affordable housing administrator will be selected.

The Simone Tract will contribute 13 affordable family sale units toward the prior round obligation and no bonus credits for a total of 13 credits.

The site is available, approvable, developable and suitable.

The site meets COAH's site suitability standards, pursuant to *N.J.A.C. 5:97-3.13*.



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- *The site has a clear title and is free of encumbrances which preclude development of affordable housing.* The site has a clear title and no legal encumbrances which would preclude its development as an inclusionary housing project.
- *The site is adjacent to compatible land uses and has access to appropriate streets.* The site has approximately 200 feet of frontage along Clementon Road (County Route 534). The site is largely surrounded by undeveloped lands. East of the site is a shopping center along Clementon Road. South of the site is recreational space and a residential neighborhood and west of the site are the athletic fields of the Berlin Community School and a commercial site along Clementon Road.
- *Adequate sewer and water capacity is available.* The site is located in the Borough's public water service area and is within the approved sewer service area. Adequate water capacity exists to serve the project. However, since this site was included in a previously approved Housing Element or Fair Share Plan, the Borough may grant a sewer connection upon request by a developer.
- *The site can be developed in accordance with R.S.I.S.* Development of the site will be consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq.

Development of the tract is consistent with the State Development and Redevelopment Plan (hereinafter the "State Plan") and the rules and regulations of all agencies with jurisdiction over the site.

- *The site is located in a "Smart Growth Planning Area".* The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1.
- *The development is not within jurisdiction of a Regional Planning Agency or CAFRA.* The site is located outside of the Pinelands, CAFRA, Highlands, or Meadowlands.
- *The site will comply with all applicable environmental regulations.* There are no wetlands, floodplains, steep slopes, Category One streams or contaminated sites located on the site or in the immediate vicinity.
- *The site will not impact any historic or architecturally important sites and districts.* There are no historic sites or districts located on the site or in the nearby surrounding area.

Smokey Run

There are five affordable units located at the Smokey Run development. The site was previously certified as part of Berlin's 1999 second round substantive certification. This inclusionary housing development is located along Smokey Run Drive and the affordable units are located at Block 4202, Lots 14, 18-20 and 47. All five affordable units



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are deed restricted to moderate income households and all units have 3 bedrooms. This does not completely comply with present UHAC standards. The project received Planning Board approval on August 14, 1989 and the affordable units were occupied between 1992 and 1994.

The site is located in the R-1 low density district which permits single family detached units on 0.30 acre lots, parks and churches on 3.0 acre lots. The development has over 500 feet of frontage on Tansboro Road. The site is not located in an urban center or workforce housing census tract.

The affordable units have a 20 year deed restriction. The affordable housing units are individually owned. Also originally constructed by Tim Schaeffer Communities, the affordable housing units are administered by the Smokey Run Townhouse Association.

The Smokey Run site contributes five affordable family sale units toward the prior round obligation and no bonus credits for a total of five credits.

Special Needs Facilities

There are three special needs facilities located in Berlin Borough. Together these three facilities have eight bedrooms. Pursuant to *N.J.A.C. 5:97-6.10(b)1*, the unit of credit is the bedroom. All three of these sites were previously certified as part of Berlin's 1999 second round substantive certification. Please see Appendix F for additional information on these facilities.

BERLIN GROUP HOME

This four-bedroom special needs facility is located at 4 Blatherwick Drive. The site is suitable for affordable housing. It is located within a residential neighborhood in the R-1 district. The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1. Furthermore the site is served by public water and sewer and was developed in accordance with applicable regulations, including environmental regulations and RSIS. The four bedrooms in this facility contribute four non-family rental units toward the prior round and four bonus credits for a total of eight credits.

PILOT SPECIAL NEEDS FACILITY

This three-bedroom special needs facility is located at 26 Constitution Boulevard. It is operated by Personalized Independent Living Opportunities & Training Service, Inc. The site is suitable for affordable housing. It is located within a residential neighborhood in the R-1 district. The adopted 2001 State Plan and the Preliminary State Plan both



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designate the site in the Metropolitan Planning Area, Planning Area 1. The site is served by public water and sewer and was developed in accordance with applicable regulations, including environmental regulations and RSIS. The three bedrooms in this facility contribute three non-family rental units toward the prior round and three bonus credits for a total of six credits.

BRIARHILL ROAD SPECIAL NEEDS FACILITY

The third special needs facility, which has one bedroom, is located at 3 Briarhill Road. The site is suitable for affordable housing. It is located within a residential neighborhood in the R-1 district. The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1. The site is connected to public water and sewer and was developed in accordance with applicable regulations, including environmental regulations and RSIS. The one bedroom in this facility contributes one non-family rental unit toward the prior round and one bonus credit for a total of two credits.

PRIOR ROUND SUMMARY

The nine affordable housing developments described above contribute a total of 117 units and 154 credits toward the prior round obligation. The 39 unit rental obligation is satisfied using 39 units at Haverhill, 28 units at Carriage Stop, 20 units at Armstrong Capital LLC and the 8 bedrooms in the Borough's three special needs facilities. Additionally, 39 of the prior round rental units received bonus credits: each of the 8 bedrooms in the special needs facilities, 28 units at Carriage Stop and three units at Haverhill. This is illustrated in Table 3.

Table 3. Summary of the Prior Round Obligation – Option 1.

Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Inclusionary Housing						
Smokey Run			x	5	0	5
Haverhill (39 of 40)	x	x		39	1	40
Carriage Stop	x		x	28	28	56
Simone Tract			x	13	0	13
Armstrong	x		x	20	0	20
Nexus (4 of 120)			x	4	0	4



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Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Special Needs						
Berlin Group Home	x			4	4	8
PILOT Special Needs	x			3	3	6
Briarhill Road	x			1	1	2
Total				117	37	154

SATISFACTION OF THE THIRD ROUND OBLIGATION

The Borough has a 31 unit third round obligation based on our calculations of permitted exclusions from COAH's growth share projections. However, in addition to this total number of credits which the Borough must meet, the Borough must also abide by the following limitations:

Third Round Minimum Family Obligation: half of the third round units

Third Round Minimum Rental Obligation = 8 units

$.25$ (third round obligation) $= .25(31) = 7.75$, rounded up to 8

Third Round Minimum Family Rental Obligation = 4 units

$.50$ (third round rental obligation) $= .5(8) = 4$

Third Round Maximum Age-Restricted = 7 units

$.25$ (third round obligation) $= .25(31) = 7.75$, rounded down to 7

Third Round Maximum Bonus Credits = 7 units

$.25$ (third round obligation) $= .25(31) = 7.75$, rounded down to 7

The Borough is proposing three means to meet the third round obligation.

DRD Developers, Inclusionary or Market-to-Affordable

DRD Developers, now known as BAM Developers, LLC, is constructing a small housing development approved for 5 market units and one affordable unit, which equates to a 20% set-aside. The project received preliminary and final approval on May 8, 2006. The site is located at 45 East Taunton Avenue on Block 1102, Lot 3.01 and it is located in the R-2 zone district, which permits single family detached units, townhouses, parks and churches. The site's lot area is .81 acres and the gross density of the project is 7.37 dwelling units per acre. The project has not yet been completed. See Appendix G for the Resolution approving this project.



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Given the complexity of finding a qualified buyer for a low income for-sale unit – particularly in the present tightening of the credit markets – the developer applied for reconsideration of the for-sale requirement with an intention of renting the unit. During discussion with the Planning Board, this request was withdrawn; however, the Planning Board granted permission for the developer to seek an existing housing unit for a market-to-affordable program. If this occurs, the setback would lower to 18.67%. Any market-to-affordable purchase will require meeting the standards for the program at *N.J.A.C. 5:97-6.9*. The site is under construction but not yet completed.

This project will contribute one affordable family for-sale unit and no bonus credits for a total of one credit toward the third round obligation.

Haverhill

As discussed above, one unit in this development was not eligible to satisfy the prior round obligation due to the age-restricted cap. As such, Haverhill will contribute one age-restricted rental unit and no bonus credits for a total of one credit toward the third round obligation.

Nexus

After the application of 4 of the 120 affordable units anticipated from the Nexus tract, the remaining 116 affordable units in this development will contribute toward the third round. Proposed as family rental units, this project will be able to maximize the Borough's allowed capacity of bonus credits. Accordingly, the Nexus Tract will contribute 116 family rental units and 7 bonus credits, for a total of 123 credits toward the third round obligation.

Under the alternative scenario outlined in the section on the Prior Round obligation, a second means of developing the site would be to develop a mixture of rental and for-sale units, both market and affordable. The site could be developed with a 36 unit rental building of which 7 units would be family affordable rental to meet the Borough's minimum rental obligation. The remaining 564 units would be for-sale townhouses, stacked townhouses or flats of which 113 units would be affordable. Four of these units would be used towards the second round gap and 109 towards the third round obligation. This scenario would not generate any bonus credits.

THIRD ROUND SUMMARY

The three affordable housing developments described above contribute a total of 118 units and 125 credits toward the third round obligation. The 8 unit rental obligation is satisfied using one age-restricted unit at Haverhill and 7 family units at the Nexus Tract. Additionally, the Nexus Tract has generated 7 third round bonus credits.



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Table 4. Satisfaction of the Third Round Obligation – Option 1.

Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Inclusionary Housing						
Nexus (116 of 120)	x		x	116	7	123
DRD Developers			x	1	0	1
Haverhill (1 of 40)	x	x		1	0	1
Total				118	7	125
Third Round Obligation						31
Surplus in the Third Round						94

The alternative development of the Nexus Tract would create a total of 118 affordable units instead of 125 and a surplus of 87 units compared to 94 units if Nexus is a fully rental development.

IMPLEMENTATION SCHEDULE

The Borough anticipates that the affordable housing units described above will be developed in the following schedule:

Table 5. Implementation Schedule – Option 1.

Program	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Armstrong Capital							20								
DRD Developers						1									
Nexus Tract								20	35	35	30				
Simone Tract															13
Total	0	0	0	0	0	1	20	20	35	35	30	0	0	0	13



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The affordable housing units within inclusionary developments do not require an action by the Borough. The zoning in place creates a realistic opportunity for development and therefore the Borough is relying on the market to develop the Borough's inclusionary housing sites.

BARRIER FREE AFFORDABLE HOUSING

Berlin Borough will comply with COAH's regulations regarding barrier free affordable units. Specifically, and pursuant to *N.J.A.C. 5:97-3.14*, all affordable units which are townhouses or located within multi-story buildings and attached to at least one other unit shall have the following features:

- An adaptable toilet and bathing facility on the first floor;
- An adaptable kitchen on the first floor;
- An accessible route of travel; however, an interior accessible route of travel shall not be required between stories;
- An adaptable room that can be used as a bedroom, with a door or the casing for installation of a door, on the first floor; and
- An accessible entranceway or evidence that the municipality has collected the appropriate funds.

As evidenced by the final item above, rather than constructing an accessible entryway for each applicable affordable unit, a developer may deposit funds equal to adapt 10% of the development's affordable units' entrances to be accessible. These funds shall be maintained in the Affordable Housing Trust Fund for the sole purpose of adapting entrances of affordable units. The Borough shall adapt the entrances upon request by a person with a disability occupying or intending to occupy an affordable unit.

AFFORDABLE HOUSING TRUST FUND

The Borough maintains an affordable housing trust fund for the purposes of affordable housing. Over the course of the third round, its contents shall consist of development fees, payments in lieu of construction, barrier free funds and interest. The affordable housing programs set forth in the herein Housing Element do not require use of the affordable housing trust fund; all programs are based on inclusionary zoning.

The Borough collects development fee for residential and nonresidential development where there is not affordable housing set-aside. The Borough's development fee ordinance will be amended to collect residential development fees equal to 1.50% of the increased equalized assessed value of the development. Consistent with recent



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amendments to the Fair Housing Act, *N.J.S.A. 52:27D-301*, the Borough will also amend its development fee ordinance to collect 2.50% of the increase in equalized assessed value of all new nonresidential construction.

The Borough will use a maximum of 20% of development fee revenue for administration purposes, pursuant to *N.J.A.C. 5:97-8.9(a)*. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low and moderate income households; one-third of this affordability assistance shall be expended on very low income households. Affordability assistance programs may include but is not limited to, down payment assistance, security deposit assistance, rental assistance and assistance with homeowner association fees.

The remaining money in the affordable housing trust fund may be used for the following activities:

- A rehabilitation program;
- New construction of municipally sponsored affordable housing units and related development costs;
- Accessory apartments;
- Market to affordable program;
- Acquisition and/or improvement of land to be used for affordable housing;
- Purchase of affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;
- Green building strategies designed to be cost savings for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units;
- Maintenance and repair of affordable housing units;
- Repayment of municipal bonds issued to provide financial support to low and moderate income housing activity or for other eligible activities; and
- Any other permissible activity in the approved spending plan.



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Option 2. Berlin Borough Third Round Housing Element

Excluding Development of the Nexus Properties, LLC, Tract

BERLIN'S AFFORDABLE HOUSING OBLIGATION

Berlin's affordable housing obligation consists of three components, the rehabilitation obligation, the prior round obligation and the third round obligation. The sum of these three components, which Berlin must satisfy, is 235 affordable housing units. This sum was calculated as follows:

- Rehabilitation Obligation: 24 units
- Prior Round Obligation: 154 units
- Third Round Obligation: 57 units

THE REHABILITATION OBLIGATION

The rehabilitation obligation is an estimate of the number of deteriorated housing units occupied by low or moderate income households within the Borough, based on Census data. COAH has calculated Berlin's rehabilitation obligation to be 24 units.

THE PRIOR ROUND OBLIGATION

The prior round obligation is the sum of the new construction obligation of the first round (1987-1993) and the second round (1993-1999). This figure is the number of affordable housing credits the Borough must provide. COAH has calculated Berlin's prior round obligation to be 154 units.

THE THIRD ROUND OBLIGATION

The third round obligation is the new construction obligation of the third round from 1999 through 2018. However, the effective period for the third round — the time period in which the Borough must address its obligation — is compressed and consists of the years 2004 through 2018. The third round affordable housing obligation is based on the "growth share" generated by household and job projections for the compressed period. These projections were developed and adopted by COAH on May 6, 2008. Each municipality is required to provide one affordable housing unit for every four regular households projected and one affordable housing unit for every 16 jobs projected. The



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affordable housing obligation which the Borough must plan to satisfy in this Housing Element is based on the household and job ratios as applied to the COAH projections.

- Household Projection: 472 dwellings
Growth Share Obligation from Household Projection: **94.40 units** (472 / 5)
- Employment Projection: 886 jobs
Growth Share Obligation from Job Projection: **55.38 units** (886 / 16)

COAH also requires that if a municipality's actual growth exceeds these projections, the higher number will need to be addressed through additional affordable units.

However, COAH's substantive rules, *N.J.A.C. 5:97-2.4(a)* permit a municipality to exclude from the projected growth share obligation the affordable and market rate units in prior round affordable housing sites that will be developed during the third round (2004 through 2018). Market rate units shall be excluded at a rate of four times the number of affordable units where a 20% affordable housing set-aside is required. Furthermore, *N.J.A.C. 5:97-2.4(b)* permits the exclusion of nonresidential development that was required to specifically address a portion of a municipality's prior round obligation. The projects with exclusions must have received credit in a first or second round certified Plan or a court judgment of compliance or the must be eligible for credit toward a municipality's prior round obligation. The Borough has three developments which are eligible to be excluded:

- The Simone Tract. This is a prior round inclusionary housing site which has not yet developed, but is anticipated to be developed during the third round. The site was included the original second round certified Housing Element; however, it was included at a 10% set-aside. The Borough is proposing to increase the set-aside to 20%. It is anticipated that 64 units will be developed on the site, of which 13 will be affordable. As such, 64 units shall be excluded from the residential projections.
- The Armstrong Tract. This site was the subject of a second and third round builder's remedy lawsuit. The current Settlement Agreement stipulates 80 units, of which 20 shall be affordable (25% set-aside), and the construction of a 4,000 square foot retail building, as well as renovation of existing buildings on the site. Portions of the shopping center will be demolished to permit the construction of the residential component of the project. The construction of the additional retail building is directly related to the 25% affordable housing set-aside, which is greater than the prior round standard set-aside of 15% for rental developments. The Borough has a 24 unit gap in satisfying its prior round obligation. As such, the 20 affordable units and associated 60 market units and 4,000 square foot retail building shall be excluded from the projected third round growth share.



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- Haverhill/Lonaconing/Lonaconing East. The Haverhill/Lonaconing/Lonaconing East (hereafter “Haverhill”) development is a result of a first round builder’s remedy lawsuit. The settlement for the site included the development of the Haverhill age-restricted inclusionary development and the unrestricted Carriage Stop and Lonaconing developments, as well as a community shopping center of up to 250,000 sf. This retail development will consist of a Wal-Mart hypermarket that also includes two pad sites. The Haverhill residential development consists of 211 market units and 40 affordable rental units, a 15.94% set-aside. Pursuant to N.J.A.C. 5:97-2.4(b), when calculating actual growth, the Borough will exclude all of the affordable units and the market rate units at a rate of 5.275 (less than the maximum of 5.667 specified in the Substantive Rules) dwellings per affordable residence since the affordable units are for rent. The Borough issued 197 certificates of occupancy between January 1, 2004 and December 31, 2007, subject to final verification. As such, all 197 units for Haverhill will be excluded. Additionally, the 380.29 jobs created by the 214,833 square foot Wal-Mart and two retail pad sites totaling 8,700 square foot will be excluded from the jobs projection.

The total third round obligation which this Housing Element and Fair Share Plan must satisfy is 57 units. See Table 6, below.

Table 6. Residential Exclusions from the Third Round Obligation – Option 2.

Projected Residential Units	472
Exclusions	
Armstrong	-80
Simone	-64
Haverhill	197
Total	-341
Units Creating Growth Share	131
Residential Growth Share	26.20



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Table 7. Employment Exclusions From the Third Round Obligation – Option 2.

Projected Jobs	886
Armstrong	6.8
Haverhill & Wal-Mart	380.01
Total	386.81
Jobs Creating Growth Share	499.19
Nonresidential Growth Share	31.12

The sum of Tables 6 and 7 is 57.40, or 57 affordable housing units, rounded.

As briefly noted above, COAH's substantive rules at *N.J.A.C. 5:97-2.2(e)* require that a municipality only be required to provide affordable housing in proportion to its actual growth, but plan for the higher of either projected growth or actual growth. Adjustments in the plan will occur based on the implementation monitoring that will be required every two years. In this document the Borough is utilizing COAH projected allocation adjusted for the allowed exclusions. Restated, should Berlin's actual growth generate an affordable housing obligation less than that generated by the projections, the Borough will only be required to satisfy the lower obligation related to actual growth. Similarly, if the Borough's actual growth generates a higher affordable housing obligation than the projections, the Borough will have to satisfy that higher number. Due to a number of factors, the Borough's COAH allocation is unlikely to be reached.

When measuring job creation, employment is based on the square footage of non-residential development that has occurred; jobs are not counted directly. Square footage is categorized into different "use groups" that define how buildings are used in the Uniform Construction Code use group. COAH has established the required number of affordable housing units per square footage (as well as jobs per 1,000 sf.) in Appendix D of their substantive rules. These multipliers relate non-residential floor area to the number of jobs created. For example, every 1,000 sf. of office space creates 2.8 jobs and every 1,000 square feet of retail space creates 1.7 jobs. The required number of affordable housing units is based on the square footage that it takes to generate 16 jobs.

SCARCE RESOURCE CONSTRAINTS

On March 7, 2007 an Order declaring that sanitary sewer capacity was a scarce resource constraint was issued. The Court found that there was a lack of sufficient sewer capacity for the Borough to satisfy their affordable housing obligation. It went on to prevent the



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Borough from “granting or making commitments to grant connections to the Sewerage Infrastructure”. However, the order also exempted three land use categories:

- Any property presently served by a failing septic system;
- Schools and municipal buildings;
- Inclusionary developments which are an element of a *Mount Laurel* compliance plan approved by the Council on Affordable Housing or the Superior Court prior to the institution of this action.

The Order prevents the Borough from granting sewer capacity to most of the unbuilt affordable housing projects now proposed in the Housing Plan since they are new in this document. These projects would likely be the first in line for any newly created capacity. However, the need for these affordable housing projects will be limited since the household and job growth generating a growth share obligation also cannot be provided sewer capacity. As it becomes available, the Borough will provide sewer capacity to the affordable housing developments in this Housing Element and Fair Share Plan which were not previously approved by COAH or Superior Court. Appendix A contains the Consent Order Declaring Sewerage Infrastructure a Scarce Resource and Imposing Constraints. Sufficient public water capacity exists for meeting the plan requirements.

SATISFACTION OF THE REHABILITATION OBLIGATION

Berlin has fully satisfied its 24 unit rehabilitation obligation. The Camden County Home Improvement Program (Division of Community Development) operates a rehabilitation program for owner-occupied units in Berlin Borough, as well as the rest of the County. This program has completed a total of 30 rehabilitations since April 1, 2001. The County’s program is funded using HUD Community Development Block Grants (CDBG). All rehabilitated units have 99-year affordability controls, pursuant to *N.J.A.C. 5:97-6.2*. The County’s Home Program does not comply with the requirement that rehabilitation programs be available to renter occupied households, *N.J.A.C. 5:97-6.2(b)6*; however, the units were completed prior to the adoption of this rule on May 6, 2008.

From 1997 through 2002, the Borough operated a rehabilitation program that was open to owner-occupied and renter-occupied housing units. The program was funded using HUD Community Development Block Grants (CDBG). During this time the Borough rehabilitated 14 units; however, only two units are eligible for credit since these were the only units which had a contract executed after April 1, 2000 and had liens placed on them after the rehabilitation. While the Borough continues to receive this funding, it is



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now used for a low-income senior transportation program. As both of these two credit-worthy rehabilitations were owner occupied, there were six year liens placed on the properties.

However, the average cost of these 32 rehabilitations (30 in the County Home Program and 2 in the Borough Program) is \$8,909. This figure is less than the \$10,000 average hard cost required by N.J.A.C. 5:97-6.2(b)2. However, the average of the most costly 24 rehabilitations is \$11,176. The Borough is only seeking credit for only the most costly 24 rehabilitations. The County's program is funded using HUD Community Development Block Grants (CDBG). Please see Appendix B for a list of units rehabilitated by the County Home Program and Appendix C for a list of units rehabilitated by the Borough program.

While the Borough did not have a rehabilitation program open to renter-occupied units during the entire time the 24 unit rehabilitation obligation was being satisfied, it was open to renter occupied units for nearly two years of this period. Furthermore, the Borough has a small renter-occupied housing stock at 17% (375) of the total occupied housing units (2,205) in 2000. The Borough requests 24 rehabilitation credits based on the small number of renter-occupied housing units, the availability of the program to renter-occupied housing units for nearly two years, the fact that the Borough rehabilitated six more units than required by the rehabilitation obligation and based on the ongoing nature of the County's Home Program.

SATISFACTION OF THE PRIOR ROUND OBLIGATION

The Borough has a 154 unit prior round obligation. However, in addition to this total number of credits which the Borough must meet, the Borough must also abide by the following limitations:

Prior Round Minimum Rental Obligation = 39 units

.25 (prior round obligation – prior cycle credits– impact of the 20% cap – impact of the 1000 unit cap) = .25 (154-0-0-0) = 38.5, rounded up to 39

Prior Round Maximum Age-Restricted = 39 units

.25 (prior round obligation + rehabilitation share – prior cycle credits – rehabilitation credits – impact of the 20% cap – impact of the 1000 unit cap) = .25 (154+24-0-24-0) = 38.5, rounded up to 39

The Borough has a number of existing affordable housing units and new components that satisfy the prior round obligation including a builder's remedy lawsuit site and a municipally sponsored site. Each of these programs is described below.



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Arlington Avenue

The Arlington Avenue site was included as an inclusionary housing site in the certified second round plan. It was identified as Block 100, Lots pt. 5, 5.05, 6, 7 and 24 for a total of 25.1 acres¹. The site was earmarked for a total of 36 units of which 4 were intended as affordable units. That concept is modified in this plan to create a municipally sponsored project for family rental units. The Borough is in negotiation with the Diocese of Camden as part of settlement discussions to swap land for the Gate of Heaven cemetery property, owner of Lot 5. It is anticipated that a 4.7 acre parcel bounded on the south by Lot 9 and the east by Lot 24 will be acquired as part of the settlement agreement. This land will create a more regularly-shaped development parcel with no environmental constraints. The Borough is owner of Lots 9 and 25 which total 9.98 acres according to tax assessment records. The addition of the Gate of Heaven parcel would expand this area to 14.68 acres. If the settlement agreement is not consummated as anticipated, the Borough will act to condemn the land pursuant to the Fair Housing Act (N.J.S.A. 52:27D-311.a(5)) for which it would utilize its affordable housing trust fund and/or municipal bonding to achieve. Once the land is obtained, the Borough will seek an affordable housing developer through a Request for Proposal process. It is expected that the developer would utilize the NJ Housing and Mortgage Finance Agency's Low Income Housing Tax Credit program and other funding for a 43 unit family rental project. The density of the project would be slightly less than five units per acre. The Borough would either lease the land for a nominal fee and sufficiently long time period to match or exceed the affordability controls (30 years minimum) or grant the land to the affordable housing developer in fee simple, depending on program requirements.

The affordable units will be developed and occupied in accordance with the Uniform Housing Affordability Control rules, *N.J.A.C. 5:26-1 et seq.*, including but not limited to the bedroom distribution requirements and affordability controls of at least 30 years. The project will be owned and the affordable units will be administered by the affordable housing developer.

Of the 43 units to be provided on this site, only two will contribute toward satisfying the prior round obligation; the remaining 41 will be utilized to satisfy the third round obligation. As such, the Borough seeks two prior round credits for this site.

The site is available, approvable, developable and suitable.

¹ - Lot 5.05 was incorrectly identified due to an error in the labeling of the Borough's tax assessment maps. This lot should be Lot 9 and will be referred that way in the remainder of this document.



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The site meets COAH's site suitability standards, pursuant to N.J.A.C. 5:97-3.13.

- *The site has a clear title and is free of encumbrances which preclude development of affordable housing.* Most of the site is currently owned by Berlin Borough and the remaining parcel is anticipated to be acquired by the end of 2008. There are otherwise no legal encumbrances which would preclude its development with the proposed affordable housing project.
- *The site is adjacent to compatible land uses and has access to appropriate streets.* The site is at the end of N. Arlington Avenue and there is alternate access from the unimproved portion of Egg Harbor Road. The site is adjacent to the land proposed for the expansion of the cemetery, a railroad line, single family houses and VFW Post 6523's recreational field. North and west of the site is undeveloped land in the Institutional zone district. West White Horse Pike is a mixture of residences and undeveloped land
- *Adequate sewer and water capacity is available.* The site is located in the Borough's public water service area and is within the approved sewer service area. Adequate water capacity exists to serve the project. This site was included in a previously approved Housing Element and Fair Share Plan and may be granted sewer connection permits.
- *The site can be developed in accordance with R.S.I.S.* Development of the site will be consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq.

Development of the Site is consistent with the State Development and Redevelopment Plan (hereinafter the "State Plan") and the rules and regulations of all agencies with jurisdiction over the site.

- *The site is located in a "Smart Growth Planning Area".* The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1.
- *The development is not within jurisdiction of a Regional Planning Agency or CAFRA.* The site is located outside of the Pinelands, CAFRA, Highlands, or Meadowlands.
- *The site will comply with all applicable environmental regulations.* There is a small pocket of wetlands in the extreme northeast corner; otherwise there are no other environmental constraints that are known, such as, floodplains, steep slopes,



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Category One streams or contaminated sites located on the site or in the immediate vicinity.

- *The site will not impact any historic or architecturally important sites and districts.* There are no historic sites or districts located on the site or in the nearby surrounding area.

Armstrong Capital

On May 18, 2006, Armstrong Capital, LLC, brought a second round Mount Laurel builder's remedy lawsuit against the Borough of Berlin. The site is 21.99 acres in size and is located along White Horse Pike (U.S. Route 30), Florence Avenue and Tansboro Road (Co. Route 561) on Block 1800, Lots 5, 6 and 9. The site is located in the C-2 Neighborhood Commercial zone district, which permits uses such as retail stores, offices, restaurants, health clubs, medical offices and municipal uses. A partially vacant shopping center with a K-Mart, diner and an additional free-standing retail building currently exist on the site. The site is not located in an urban center or workforce housing census tract.

The Borough is currently negotiating with Armstrong Capital, LLC. The anticipated settlement negotiations include the following components:

- A total of 80 residential rental units with a 25% set-aside for 20 affordable units (10 low income and 10 moderate income). The affordable units will be mixed with the market units such that the facades will be indistinguishable from the market units. The residential component will consist of 9.9 acres and will have a gross density of 8 units per acre.
- 20,000 square feet of renovated retail space containing a Dollar General store and other small stores.
- The 4,000 square foot Jersey Diner.
- A 4,000 square foot new retail pad site facing White Horse Pike.
- A 97,000 square foot K-Mart.

The affordable units will be developed and occupied in accordance with the Uniform Housing Affordability Control rules, *N.J.A.C. 5:26-1 et seq.*, including but not limited to the bedroom distribution requirements and affordability controls of at least 30 years. Additionally, the affordable units will comply with *N.J.A.C. 5:97-3.14*, accessible and adaptable affordable units. The project's affordable units will be owned by Armstrong Capital, LLC, or subsidiary company and they will be administered by a certified affordable housing administrator to be determined at a future date.



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The Armstrong Capital, LLC, site provides 20 prior round affordable family rental units and no bonus credits, for a total of 20 credits contributing toward the prior round obligation.

The site meets COAH's site suitability standards, pursuant to *N.J.A.C. 5:97-3.13*. The site is available, approvable, developable and suitable as detailed below:

- *The site has a clear title and is free of encumbrances which preclude development of affordable housing.* Armstrong Capital is parent of company of AC I Berlin, LLC, that owns the shopping center and there are no legal encumbrances which would preclude its development with the proposed affordable housing project.
- *The site is adjacent to compatible land uses and has access to appropriate streets.* The site has frontage on and access to three streets: approximately 700 feet of frontage along Tansboro Road, approximately 1,400 feet of frontage along Florence Avenue and nearly 800 feet of frontage along East White Horse Pike. Northeast of the site, across East White Horse Pike, is undeveloped land in the PC-2 Neighborhood Commercial district. Otherwise, the site is surrounded by a mix of residential neighborhoods and commercial properties in the C-2 Neighborhood Commercial district, Institutional district, R-1 Low Density Residential district, R-2 High Density district and R-3 Garden Apartment district.
- *Adequate sewer and water is available.* The site is located in the Borough's public water service area and is within the approved sewer service area. Adequate water capacity exists to serve the project. However, since this site was not included in a previously approved Housing Element or Fair Share Plan, the Borough may not grant capacity at this time. However, the Borough will grant a sewer connection upon additional capacity becoming available. It is anticipated that the developer of the site will make provision for any sanitary sewer capacity necessitated by the development.
- *The site can be developed in accordance with R.S.I.S.* Development of the site will be consistent with the Residential Site Improvement Standards, *N.J.A.C. 5:21-1 et seq.*

Development of the site is consistent with the State Development and Redevelopment Plan (hereinafter the "State Plan") and the rules and regulations of all agencies with jurisdiction over the site.

- *The site is located in a "Smart Growth Planning Area".* The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1.



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- *The development is not within jurisdiction of a Regional Planning Agency or CAFRA.* The site is located outside of the Pinelands, CAFRA, Highlands, or Meadowlands jurisdictions. It is across the street from lands in the Pinelands.
- *The site will comply with all applicable environmental regulations.* There are no wetlands, floodplains, steep slopes, Category One streams or contaminated sites located on the site or in the immediate vicinity.
- *The site will not affect any historic or architecturally important sites and districts.* There are no historic sites or districts located on the site or in the nearby surrounding area.

The development is contingent on approval of a final settlement.

Carriage Stop

This development, formerly known as the Marshall Site, consists of 511 total units: 483 market units and 28 affordable rental units. The site was previously certified as part of Berlin's 1999 second round substantive certification. The site is located along Roosevelt Boulevard in Block 2201 on a 147 acre site, now consisting of many different lot numbers. The site has three points of access to Watsontown-New Freedom Road (County Route 691) and is located in the R-1A district. The R-1A district permits single family detached units, townhouses, parks and churches. The affordable units are 75% moderate income and 25% low income; additionally, there are four one-bedroom units, 16 two-bedroom units and eight three-bedroom units. The project was approved by the Court on June 23, 1989 and the final certificate of occupancy was issued prior to January 1, 2004. The site is not located in an urban center or workforce housing census tract.

The affordable units have a 20 year deed restriction. The project developer, current owner and affordable housing administrator are handled by Tim Schaeffer Communities who constructed the project.

Carriage Stop provides 28 prior round affordable family rental units, each of which is eligible for a prior round bonus credit, for a total of 56 credits contributing toward the prior round obligation.

Haverhill

Haverhill, also known as Lonaconing, is an age-restricted inclusionary housing development that includes a total of 251 housing units: 211 market units and 40 affordable rental units. The site was subject to a first round builder's remedy lawsuit and was previously certified as part of Berlin's 1999 second round substantive certification. The case's Final Judgment and Order was entered on April 20, 1989. The project received site plan approval from Superior Court on February 5, 1991; however, the



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approval was amended by a December 12, 2001 Order. The final certificate of occupancy was issued on October 20, 2005. The Settlement Agreement for the project included not only the 251 housing units but also a 215,000 shopping center and two pad sizes at 3,700 square feet and 5,000 square feet, respectively, for a total of 223,700 square feet of retail space. See Appendix D for this project's Court Orders and Settlement Agreement.

Most of the residential portion of the project is located in Block 900, Lot 31, subsequently subdivided into other lots on the east side of Berlin-Cross Keys Road clustered on Sequoia Drive and Bryce Road. The eastern side of the project which includes both residential (Lonaconing East) and non-residential sections (Wal-Mart) is located in Block 2201.01, Lots 1-41, 43-55 and Block 2201.02, Lots 1-21 and Block 2201.01, Lot 42, respectively. The residential portion of Lonaconing East is approximately 12 acres with 69 units for a gross density of 5.75 dwelling units per acre. All of these units are located on Glacier Drive. The Wal-Mart parcel is 34.7 acres. Neither side of the road is located in an urban center or workforce housing census tract.

The western side of Haverhill is primarily located in the R-2 district, but with sections also in the R-1 residential and C-2 commercial districts. The C-2 district permits uses including retail stores, offices, restaurants, health clubs, medical offices and Borough uses and the R-2 district permits uses such as single-family detached units, townhouses, parks & churches. The R-1 district has been previously described. The eastern side of the project is zoned C-2 commercial and I-3 industrial.

The 40 affordable units are for rent and they consist of 20 low income and 20 moderate income households. There are 24 two-bedroom units and 16 one-bedroom units. As an age-restricted development, this project complies with the bedroom distribution requirements of the Uniform Housing Affordability Control rules. The affordable units have a 20 year deed restriction. The project developer, current owner and affordable housing administrator remain with Tim Schaeffer Communities.

Due to the prior round senior cap of 39 units, only that many units of the Haverhill development may contribute toward the prior round obligation; the remaining unit will contribute toward the third round obligation. Three of the 39 affordable senior rental units are eligible for bonus credits of .33 each; as such, the Haverhill development will contribute 40 credits toward the prior round obligation.

Simone Tract

The Simone Tract is an inclusionary housing site which has not yet developed. The site was previously certified as part of Berlin's 1999 second round substantive certification. The second round site consisted of Block 400, part of Lot 3 and is about 12 acres in size. The site is located on the south side of Clementon Road (County Route 534). The site is



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currently being farmed. The site is not located in an urban center or workforce housing census tract. The site is located in the R-1 low density district which permits single family detached dwellings. The R-1 includes an existing density bonus for the provision of affordable housing at a 10% setaside from 2 to 2.4 units per acre and if the percentage is higher, the density increases to an allowed 2.7 units per acre. Lot sizes range from 14,250 sf. to 10,000 sf. under these different development options.

The Borough is proposing to rezone the site from the R-1 district to the R-2 district. The R-2 district is consistent with the second round substantive rules for inclusionary zoning and presumptive densities in Planning Area 2: 6 units per acre and a 20% set-aside. With this zoning, it is anticipated that the site can accommodate a total of 64 housing unit, of which 13 would be affordable units. The affordable units are intended to be family or senior for sale units. The entire site is 24.56 acres and the prior plan earmarked half of the site for inclusion development. In this plan, the size of the area identified for inclusionary development is proposed to decrease to 10.5 acres. This action increases the density to slightly more than the minimum six units per acre in accordance with the proposed rules of COAH for suburban planning areas.

The site continues to present a realistic opportunity for the construction of affordable housing, pursuant to *N.J.A.C. 5:97-6.5*. As detailed below, the site meets COAH's site suitability standards, pursuant to *N.J.A.C. 5:97-3.13*. Additionally, market conditions in the Borough are such that the site can be expected to be developed during the third round in a manner similar to other R-2 district inclusionary housing districts. Furthermore, the R-1 zoning on the site has been in place since prior to the filing of the Borough's June 2007 Third Round Housing Element and Fair Share Plan. The R-2 district, because it permits a higher density, is expected to add an incentive to develop the property.

The affordable units will be developed and occupied in accordance with the Uniform Housing Affordability Control rules, *N.J.A.C. 5:26-1 et seq.*, including but not limited to the bedroom distribution requirements and affordability controls of at least 30 years. Additionally, the affordable units will comply with *N.J.A.C. 5:97-3.14*, accessible and adaptable affordable units. Once the development is designed and approved, an affordable housing administrator will be selected.

The Simone Tract will contribute 13 affordable family sale units toward the prior round obligation and no bonus credits for a total of 13 credits.

The site is available, approvable, developable and suitable.

The site meets COAH's site suitability standards, pursuant to *N.J.A.C. 5:97-3.13*.



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- *The site has a clear title and is free of encumbrances which preclude development of affordable housing.* The site has a clear title and no legal encumbrances which would preclude its development as an inclusionary housing project.
- *The site is adjacent to compatible land uses and has access to appropriate streets.* The site has approximately 200 feet of frontage along Clementon Road (County Route 534). The site is largely surrounded by undeveloped lands. East of the site is a shopping center along Clementon Road. South of the site is recreational space and a residential neighborhood and west of the site are the athletic fields of the Berlin Community School and a commercial site along Clementon Road.
- *Adequate sewer and water capacity is available.* The site is located in the Borough's public water service area and is within the approved sewer service area. Adequate water capacity exists to serve the project. However, since this site was included in a previously approved Housing Element or Fair Share Plan, the Borough may grant a sewer connection upon request by a developer.
- *The site can be developed in accordance with R.S.I.S.* Development of the site will be consistent with the Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq.

Development of the tract is consistent with the State Development and Redevelopment Plan (hereinafter the "State Plan") and the rules and regulations of all agencies with jurisdiction over the site.

- *The site is located in a "Smart Growth Planning Area".* The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1.
- *The development is not within jurisdiction of a Regional Planning Agency or CAFRA.* The site is located outside of the Pinelands, CAFRA, Highlands, or Meadowlands.
- *The site will comply with all applicable environmental regulations.* There are no wetlands, floodplains, steep slopes, Category One streams or contaminated sites located on the site or in the immediate vicinity.
- *The site will not impact any historic or architecturally important sites and districts.* There are no historic sites or districts located on the site or in the nearby surrounding area.

Smokey Run

There are five affordable units located at the Smokey Run development. The site was previously certified as part of Berlin's 1999 second round substantive certification. This inclusionary housing development is located along Smokey Run Drive and the affordable units are located at Block 4202, Lots 14, 18-20 and 47. All five affordable units



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are deed restricted to moderate income households and all units have 3 bedrooms. This does not completely comply with present UHAC standards. The project received Planning Board approval on August 14, 1989 and the affordable units were occupied between 1992 and 1994.

The site is located in the R-1 low density district which permits single family detached units on 0.30 acre lots, parks and churches on 3.0 acre lots. The development has over 500 feet of frontage on Tansboro Road. The site is not located in an urban center or workforce housing census tract.

The affordable units have a 20 year deed restriction. The affordable housing units are individually owned. Also originally constructed by Tim Schaeffer Communities, the affordable housing units are administered by the Smokey Run Townhouse Association.

The Smokey Run site contributes five affordable family sale units toward the prior round obligation and no bonus credits for a total of five credits.

Special Needs Facilities

There are three special needs facilities located in Berlin Borough. Together these three facilities have eight bedrooms. Pursuant to *N.J.A.C. 5:97-6.10(b)1*, the unit of credit is the bedroom. All three of these sites were previously certified as part of Berlin's 1999 second round substantive certification. Please see Appendix F for additional information on these facilities.

BERLIN GROUP HOME

This four-bedroom special needs facility is located at 4 Blatherwick Drive. The site is suitable for affordable housing. It is located within a residential neighborhood in the R-1 district. The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1. Furthermore the site is served by public water and sewer and was developed in accordance with applicable regulations, including environmental regulations and RSIS. The four bedrooms in this facility contribute four non-family rental units toward the prior round and four bonus credits for a total of eight credits.

PILOT SPECIAL NEEDS FACILITY

This three-bedroom special needs facility is located at 26 Constitution Boulevard. It is operated by Personalized Independent Living Opportunities & Training Service, Inc. The site is suitable for affordable housing. It is located within a residential neighborhood in the R-1 district. The adopted 2001 State Plan and the Preliminary State Plan both



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designate the site in the Metropolitan Planning Area, Planning Area 1. The site is served by public water and sewer and was developed in accordance with applicable regulations, including environmental regulations and RSIS. The three bedrooms in this facility contribute three non-family rental units toward the prior round and three bonus credits for a total of six credits.

BRIARHILL ROAD SPECIAL NEEDS FACILITY

The third special needs facility, which has one bedroom, is located at 3 Briarhill Road. The site is suitable for affordable housing. It is located within a residential neighborhood in the R-1 district. The adopted 2001 State Plan and the Preliminary State Plan both designate the site in the Metropolitan Planning Area, Planning Area 1. The site is connected to public water and sewer and was developed in accordance with applicable regulations, including environmental regulations and RSIS. The one bedroom in this facility contributes one non-family rental unit toward the prior round and one bonus credit for a total of two credits.

PRIOR ROUND SUMMARY

The nine affordable housing developments described above contribute a total of 117 units and 154 credits toward the prior round obligation. The 39 unit rental obligation is satisfied using 39 units at Haverhill, 28 units at Carriage Stop, 20 units at Armstrong Capital LLC and the 8 bedrooms in the Borough's three special needs facilities. Additionally, 39 of the prior round rental units received bonus credits: each of the 8 bedrooms in the special needs facilities, 28 units at Carriage Stop and three units at Haverhill.

Table 8. Summary of the Prior Round Obligation – Option 2.

Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Inclusionary Housing						
Smokey Run			x	5	0	5
Haverhill (39 of 40)	x	x		39	1	40
Carriage Stop	x		x	28	28	56
Simone Tract			x	13	0	13
Armstrong	x		x	20	2	22



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Special Needs						
Berlin Group Home	x			4	4	8
PILOT Special Needs	x			3	3	6
Briarhill Road	x			1	1	2
Municipal Sponsored Construction						
Arlington Avenue	x		x	2	0	2
Total				115	39	154

SATISFACTION OF THE THIRD ROUND OBLIGATION

The Borough has a 57 unit third round obligation based on our calculations of permitted exclusions from COAH's growth share projections. However, in addition to this total number of credits which the Borough must meet, the Borough must also abide by the following limitations:

Third Round Minimum Family Obligation: half of the third round units

Third Round Minimum Rental Obligation = 15 units

$.25$ (third round obligation) $= .25(57) = 14.25$, rounded up to 15

Third Round Minimum Family Rental Obligation = 8 units

$.50$ (third round rental obligation) $= .5(15) = 7.5$, rounded up to 8

Third Round Maximum Age-Restricted = 15 units

$.25$ (third round obligation) $= .25 (57) = 14.25$, rounded down to 15

Third Round Maximum Bonus Credits = 14 units

$.25$ (third round obligation) $= .25 (57) = 14.25$, rounded down to 14

The Borough is proposing three means to meet the third round obligation.

DRD Developers, Inclusionary or Market-to-Affordable

DRD Developers, now known as BAM Developers, LLC, is constructing a small housing development approved for 5 market units and one affordable unit, which equates to a 20% set-aside. The project received preliminary and final approval on May 8, 2006. The site is located at 45 East Taunton Avenue on Block 1102, Lot 3.01 and it is located in the R-2 zone district, which permits single family detached units, townhouses, parks and churches. The site's lot area is .81 acres and the gross density of the project is 7.37 dwelling units per acre. The project has not yet been completed. See Appendix G for the Resolution approving this project.



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Given the complexity of finding a qualified buyer for a low income for-sale unit – particularly in the present tightening of the credit markets – the developer applied for reconsideration of the for-sale requirement with an intention of renting the unit. During discussion with the Planning Board, this request was withdrawn; however, the Planning Board granted permission for the developer to seek an existing housing unit for a market-to-affordable program. If this occurs, the setaside would lower to 18.67%. Any market-to-affordable purchase will require meeting the standards for the program at *N.J.A.C. 5:97-6.9*. The site is under construction but not yet completed.

This project will contribute one affordable family for-sale unit and no bonus credits for a total of one credit toward the third round obligation.

Haverhill

As discussed above, one unit in this development was not eligible to satisfy the prior round obligation due to the age-restricted cap. As such, Haverhill will contribute one age-restricted rental unit and no bonus credits for a total of one credit toward the third round obligation.

Arlington Avenue

As discussed above, 41 of the 43 affordable units in this development will contribute toward the third round. As family rental units, this project is able to maximize the Borough's capacity of bonus credits. Accordingly, the Arlington Avenue site will contribute 41 family rental units and 14 bonus credits, for a total of 55 credits toward the third round obligation.

THIRD ROUND SUMMARY

The three affordable housing developments described above contribute a total of 43 units and 57 credits toward the third round obligation. The 14 unit rental obligation is satisfied using one age-restricted unit at Haverhill and 41 family units at the Arlington Avenue site. Additionally, the Arlington Avenue site has generated the 14 third round bonus credits.



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Table 9. Satisfaction of the Third Round Obligation – Option 2.

Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Inclusionary Housing						
DRD Developers			x	1	0	1
Haverhill (1 of 40)	x	x		1	0	1
Municipal Sponsored Construction						
Arlington Avenue	x		x	41	14	55
Total				43	14	57

Option 2 meets the third round obligation without carrying any surplus. The municipality may decide to develop a larger facility on the Arlington Avenue site in order to produce a surplus cushion for unanticipated growth in the third round or for fourth round purposes.

IMPLEMENTATION SCHEDULE

The Borough anticipates that the affordable housing units described above will be developed in the following schedule:

Table 10. Implementation Schedule – Option 2.

Program	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Armstrong Capital							20								
DRD Developers						1									
Simone Tract															13
Arlington Avenue											43				
Total	0	0	0	0	0	1	20	0	0	0	43	0	0	0	13

The affordable housing units within inclusionary developments do not require an action by the Borough. The zoning in place creates a realistic opportunity for development and



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therefore the Borough is relying on the market to develop the Borough's inclusionary housing sites.

BARRIER FREE AFFORDABLE HOUSING

Berlin Borough will comply with COAH's regulations regarding barrier free affordable units. Specifically, and pursuant to *N.J.A.C. 5:97-3.14*, all affordable units which are townhouses or located within multi-story buildings and attached to at least one other unit shall have the following features:

- An adaptable toilet and bathing facility on the first floor;
- An adaptable kitchen on the first floor;
- An accessible route of travel; however, an interior accessible route of travel shall not be required between stories;
- An adaptable room that can be used as a bedroom, with a door or the casing for installation of a door, on the first floor; and
- An accessible entranceway or evidence that the municipality has collected the appropriate funds.

As evidenced by the final item above, rather than constructing an accessible entryway for each applicable affordable unit, a developer may deposit funds equal to adapt 10% of the development's affordable units' entrances to be accessible. These funds shall be maintained in the Affordable Housing Trust Fund for the sole purpose of adapting entrances of affordable units. The Borough shall adapt the entrances upon request by a person with a disability occupying or intending to occupy an affordable unit.

AFFORDABLE HOUSING TRUST FUND

The Borough maintains an affordable housing trust fund for the purposes of affordable housing. Over the course of the third round, its contents shall consist of development fees, payments in lieu of construction, barrier free funds and interest. The affordable housing programs set forth in the herein Housing Element do not require use of the affordable housing trust fund; all programs are based on inclusionary zoning.

The Borough collects development fee for residential and nonresidential development where there is not affordable housing set-aside. The Borough's development fee ordinance will be amended to collect residential development fees equal to 1.50% of the increased equalized assessed value of the development. Consistent with recent amendments to the Fair Housing Act, *N.J.S.A. 52:27D-301*, the Borough will also amend



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its development fee ordinance to collect 2.50% of the increase in equalized assessed value of all new nonresidential construction.

The Borough will use a maximum of 20% of development fee revenue for administration purposes, pursuant to *N.J.A.C. 5:97-8.9(a)*. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low and moderate income households; one-third of this affordability assistance shall be expended on very low income households. Affordability assistance programs may include but is not limited to, down payment assistance, security deposit assistance, rental assistance and assistance with homeowner association fees.

The remaining money in the affordable housing trust fund may be used for the following activities:

- A rehabilitation program;
- New construction of municipally sponsored affordable housing units and related development costs;
- Extensions or improvements of roads and infrastructure directly serving municipally sponsored affordable housing sites;
- Accessory apartments;
- Market to affordable program;
- Direct subsidy to a municipally sponsored affordable housing provider to ensure the economic feasibility of the construction of affordable housing units within the municipality.
- Acquisition and/or improvement of land to be used for municipally sponsored affordable housing;
- Purchase of existing affordable housing for the purpose of maintaining or implementing affordability controls, such as in the event of a foreclosure;
- Green building strategies designed to be cost savings for low and moderate income households, either for new construction that is not funded by other sources, or as part of necessary maintenance or repair of existing units;
- Maintenance and repair of affordable housing units;
- Repayment of municipal bonds issued to provide financial support to low and moderate income housing activity or for other eligible activities; and
- Any other activity in the approved spending plan.



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Architecture

Planning

Landscape Architecture

Appendix A.

Consent Order Declaring Sewerage Infrastructure a Scare Resource and Imposing Constraints



ATTORNEYS AT LAW • A PROFESSIONAL CORPORATION

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PLEASE RESPOND TO CHERRY HILL

March 13, 2007

Stuart A. Platt, Esquire
Marazzo & Platt, P.C.
40 Berlin Avenue
Stratford, NJ 08084

Jeffrey R. Surenian, Esquire
Jeffrey R. Surenian and Associates
Rivers Edge Professional Building
2052 Highway 35, Suite 201
Wall Township, NJ 07719

Re: Nexus Properties, Inc. vs. Borough of Berlin
Docket No. L-2285-06

Gentlemen:

Please find enclosed the Consent Order Declaring Sewerage Infrastructure A Scarce Resource And Imposing Constraints signed by Judge Freeman on March 7, 2007. Please insure that the appropriate municipal officials have actual knowledge of this Order.

Very truly yours,

FLASTER GREENBERG P.C.

A handwritten signature in black ink, appearing to be "DRO", written over the printed name of the sender.

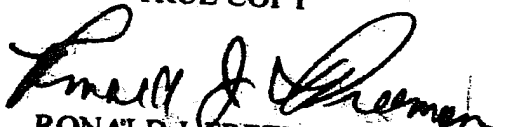
David R. Oberlander

DRO:nmo
Enclosure

RECEIVED
MAR 16 2007

BY: _____

Carl S. Bisgaier, Esquire
David R. Oberlander Esquire
FLASTER/GREENBERG P.C.
1810 Chapel Avenue West
Cherry Hill, New Jersey 08002-4609
Phone: (856) 661-2283
Attorneys for Plaintiff Nexus Properties, Inc.

TRUE COPY

RONALD J. FREEMAN, J.S.C.

NEXUS PROPERTIES, INC., Plaintiff, vs. THE BOROUGH OF BERLIN, and the PLANNING BOARD OF THE BOROUGH OF BERLIN, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION CAMDEN COUNTY DOCKET NO. L-2285-06 CIVIL CASE - MOUNT LAUREL CONSENT ORDER DECLARING SEWERAGE INFRASTRUCTURE A SCARE RESOURCE AND IMPOSING CONSTRAINTS
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This matter having been open to the Court by David R. Oberlander, Esq., of Flaster/Greenberg P.C., attorneys for Plaintiff Nexus Properties, Inc., and Jeffrey R. Surenian, Esq., of Jeffrey R. Surenian and Associates, LLC, attorney for defendant Borough of Berlin (the "**Borough**"), and Stuart A. Platt, Esq., of Marrazzo and Platt, PC, attorney for defendant Planning Board for the Borough of Berlin (the "**Planning Board**"); and it being represented to the Court that the remaining capacity allocated to the Borough in the sewerage transmission system of the Camden County Municipal Utilities Authority ("**CCMUA**") is less than the amount required to serve the inclusionary project proposed by Plaintiff in this litigation; and the sewer lines of the Borough and, to the extent they have allocated capacity to serve the Borough, the lines of the CCMUA (together referred to as the "**Sewerage Infrastructure**") are needed to

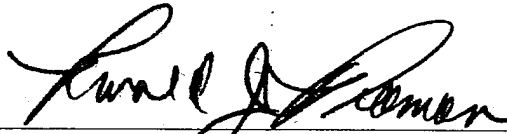
enable the Borough to satisfy its Mount Laurel obligation; and the parties having consented to the restraints imposed by this Order; and for good cause shown:

It is, thereupon, on this 7th day of March, 2007 ORDERED as follows:

1. There is a lack of sufficient sewer capacity to enable the Borough to fully meet its fair share and, therefore, sewer capacity is hereby deemed a scarce resource subject to further order of this Court.
2. The Borough and the Planning Board are restrained from granting or making commitments to grant connections to the Sewerage Infrastructure and shall condition the endorsement of any applications relating thereto to the terms and conditions hereof regarding the granting or the commitment to granting connections to the Sewerage Infrastructure.
3. The following are exempt from the constraints set forth in this Order, and may be connected to the Sewerage Infrastructure, notwithstanding anything to the contrary herein:
 - a. Any property presently served by a failing septic system;
 - b. Schools and municipal buildings;
 - c. Inclusionary developments which are an element of a *Mount Laurel* compliance plan approved by the Council on Affordable Housing or the Superior Court prior to the institution of this action.
4. The restraints imposed by this Order shall not prevent any development application from being filed, heard and granted by any relevant approving agency, subject to the condition that no permit or approval shall be deemed to vest any rights in any property or in any third party with regard to access to the Sewerage Infrastructure. All development approvals which would require a connection to the Sewerage Infrastructure shall be made expressly subject to the terms of this Order

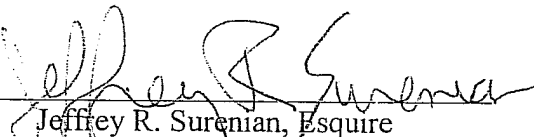
5. Any third parties seeking a connection to the Sewerage Infrastructure may apply to this Court by Notice of Motion to have the restraints imposed by this Order removed as to any particular parcel on two days written notice.

6. The parties reserve all their claims and defenses and this Consent Order shall not be used by either party as waiving or relinquishing any claim or defense.


HON. RONALD J. FREEMAN, J.S.C.

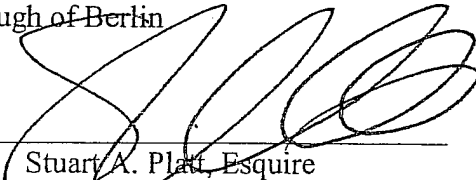
I hereby consent to the form and entry
of the above Order.

**JEFFREY R. SURENIAN AND
ASSOCIATES, LLC**
Attorney for Defendant, Borough of Berlin

By: 
Jeffrey R. Surenian, Esquire

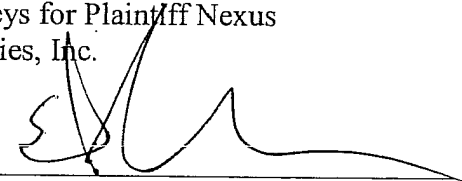
Dated: March 7, 2007

MARRAZZO AND PLATT, PC
Attorney for Defendant, Planning Board for
Borough of Berlin

By: 
Stuart A. Platt, Esquire

Dated: 3-5-07

FLASTER/GREENBERG, PC
Attorneys for Plaintiff Nexus
Properties, Inc.

By: 
David R. Oberlander, Esquire

Dated: March 6, 2007



Clarke Caton Hintz

Architecture

Planning

Landscape Architecture

Appendix B.

County Home Program Documentation

Charged Courtly
Community Development

Atto Beth
McMAHUS

Berlin coah 2000-2008

FILE	LNAME	INCOME	DATEEL	CDSHARE COMPLETE
06D244	KENNEDY	L	99/07/30	11260 00/05/26
06D247	MCCAULEY	M	00/02/01	3675 00/04/14
06D248	KARAS	M	00/02/09	7660 00/09/15
06D248	KARAS	M	00/02/09	4460 00/09/15
06D249	SPACKMAN	M	00/10/12	9300 01/04/30
06D249	SPACKMAN	M	00/10/12	5860 01/04/30
06D250	HYMAN	L	01/02/01	9270 01/09/28
06D250	HYMAN	M	01/02/01	1600 01/09/28
06D251	FLEMMING	L	01/02/15	3874 02/06/07
06D251	FLEMMING	L	01/02/15	2760 02/06/07
06D251	FLEMMING	L	01/02/15	587 02/06/07
06D251	FLEMMING	L	01/02/15	1595 02/06/07
06D251	FLEMMING	L	01/02/15	21320 02/06/07
06D251	FLEMMING	L	01/02/15	9200 02/06/07
06D256	TRUDELL	M	02/01/09	800 02/03/15
06D256	TRUDELL	M	02/01/09	2380 02/03/15
06D257	TROUT	M	02/03/27	15085 03/07/03
06D258	THOMPSON	M	02/05/14	18185 03/06/20
06D261	VENABLE	M	03/09/12	11283 04/07/30

Wednesday, August 06, 2008

Page 1 of 2

FILE	LNAME	INCOME	DATEEL	CDSHARE COMPLETE
06D261	VENABLE	IA	03/09/12	3460 04/07/30
06D263	MCCAULEY	M	03/11/03	16257 04/07/16
06D263	MCCAULEY	M	03/11/03	2805 04/07/16
06D266	NOWLIN	M	05/03/14	3900 05/09/23
06D266	NOWLIN	IA	05/03/14	3777 05/09/23
06H260	WORTHINGTO	IA	03/04/11	25025 04/03/26
06H262	POWELL	L	03/08/23	29550 05/06/03
06H262	POWELL	L	03/08/23	4050 05/06/03
06H264	HOOD	M	04/08/02	7800 05/07/15
06H264	HOOD	M	04/08/02	10855 05/07/15
06H264	HOOD	M	04/08/02	4990 05/07/15



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Architecture

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Landscape Architecture

Appendix C.

Borough Rehabilitation Program Documentation

REHABILITATION REPORT

Muni	Block	Lot	St	OL	OM	RL	RM	Oth	Final Insp	Expended	Code	Lien	Comp
0405	BERLIN BORO												
	CAMDEN												
25	55 NEW FREEDOM ROAD	16	7	0	1	0	0	0	12-19-2000	\$5,000.00	Y		1
27	15 LOCUST AVENUE	11	7	1	0	0	0	0	05-18-2000	\$10,635.00	Y	6	1
29	19 LOCUST AVENUE	13	7	0	1	0	0	0	10-16-2000	\$4,985.00	Y		1
30		12	7	1	0	0	0	0	01-24-2002	\$21,800.00	6	Y	1
Status totals													
				2	2	0	0	0		\$45,500.00			4
1	05D020		6	0	0	0	0	1	04-02-1990	\$2,680.00	Y	99	1
2	05D022		6	0	0	0	0	1	03-19-1992	\$6,130.00	Y	99	1
3	05D024		6	0	0	0	0	1	02-24-1994	\$4,480.00	Y	99	1
4	05D027		6	0	0	0	0	1	11-17-1994	\$8,815.00	Y	99	1
5	05D030		6	0	0	0	0	1	07-31-1997	\$1,988.00	Y	99	1
6	05D032		6	0	0	0	0	1	05-01-1997	\$2,390.00	Y	99	1
7	05D034		6	0	0	0	0	1	01-15-1998	\$12,166.00	Y	99	1
8	05D035		6	0	0	0	0	1	07-16-1998	\$16,130.00	Y	99	1
9	05H023		6	0	0	0	0	1	08-19-1993	\$6,997.00	Y	99	1
10	05H026		6	0	0	0	0	1	03-02-1995	\$46,318.00	Y	99	1
11	05H028		6	0	0	0	0	1	08-21-1997	\$8,200.00	Y	99	1
12	05H029		6	0	0	0	0	1	06-06-1996	\$19,750.00	Y	99	1
13	05H030		6	0	0	0	0	1	07-31-1997	\$19,674.00	Y	99	1
14	05H031		6	0	0	0	0	1	01-09-1997	\$27,720.00	Y	99	1
15	05H032		6	0	0	0	0	1	05-01-1997	\$16,916.00	Y	99	1
16	05H033		6	0	0	0	0	1	10-02-1997	\$12,275.00	Y	99	1
17		10	6	1	0	0	0	0	01-21-1998	\$5,500.00	Y		1

Borough Rehabs

REHABILITATION REPORT

Muni	Block	Lot	St	OL	OM	RL	RM	Oth	Final Insp	Expended	Code	Lien	Comp
20	1408	19	6	1	0	0	0	0	01-27-1998	\$4,669.00	Y		1
21	1404	7	6	1	0	0	0	0	08-31-1998	\$7,355.00	Y		1
22	190	25	6	1	0	0	0	0	07-02-1998	\$6,252.00	Y		1
23	191	8	6	1	0	0	0	0	08-20-1998	\$6,100.00	Y		1
24	2003	9	6	0	1	0	0	0	12-07-1998	\$7,765.00	Y		1
26	2106		6	0	1	0	0	0	09-29-2000	\$14,250.00	Y		1
28	604	6	6	1	0	0	0	0	03-13-2004	\$4,357.00	Y	6	1
	Status totals			6	2	0	0	16		\$274,987.00			24
18	702	14		0	1	0	0	0		\$7,580.00	Y		0
19	1108	20		1	0	0	0	0		\$5,300.00	Y		0
	Status totals			1	1	0	0	0		\$12,880.00			0
	Totals			9	5	0	0	16		\$333,367.00			28



Clarke Caton Hintz

Architecture

Planning

Landscape Architecture

Appendix D.

Haverhill Development Court Orders and Settlement Agreement

STEPHEN D. SAMOST, ESQUIRE
 300 North Cooper Road
 Berlin, New Jersey 08009
 (609) 768-9200
 Attorney for Plaintiff, Haverhill

HAVERHILL, a New Jersey
 Partnership,

Plaintiff

v.

THE BOROUGH OF BERLIN
 a municipal corporation of the
 State of New Jersey, THE BOROUGH
 COUNCIL OF THE BOROUGH OF
 BERLIN, THE PLANNING BOARD OF
 THE BOROUGH OF BERLIN, and the
 CAMDEN COUNTY MUNICIPAL
 UTILITIES AUTHORITY,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 : CAMDEN/ATLANTIC COUNTY
 DOCKET NO. L-017539-85

: CIVIL ACTION
 : (Mt. Laurel)

: FINAL JUDGMENT AND ORDER

THIS MATTER being brought before the Court upon application of Stephen D. Samost, Esquire, attorney for Haverhill, George Botcheos, Esquire, of the law firm of Laskin and Botcheos, attorneys for the Borough of Berlin, and Howard C. Long, Jr., Esquire, of the law firm of Higgins, Slatchetka, and Long, attorneys for the Camden County Municipal Utilities Authority, and the Court being advised that the parties have settled the issues between the parties and the Court having been informed that the parties consent to this Judgment, and

WHEREAS, William Queale, Jr. has assisted the parties and the Court in determining fair share and region and determining whether the settlement meets the Borough's fair share obligation. Mr. Queale has filed with the Court a copy of the 1989

Berlin Borough Master Plan, which includes this information. The Master Plan was adopted by the Berlin Borough Planning Board on January 24, 1989. The Berlin Borough Master Plan is attached hereto and made a part hereof as Exhibit "A," and

WHEREAS, Mr. Queale has also filed with the Court a copy of amendments to the Berlin Borough Zoning Ordinance, which the Berlin Borough Council has or will adopt in order to implement the Land Use Element and Housing Element of the Master Plan and bring the Borough's Ordinance into conformance with its obligations to provide low and moderate income housing in the Borough. A copy of the Ordinance Amendments are attached hereto and made a part hereof as Exhibit "B."

IT IS ON THIS 20 day of April, 1989,
ORDERED as follows:

1. The compliance package of the Borough of Berlin as contained in the Master Plan and Zoning Ordinance Amendments is hereby approved by the Court.

2. The defendant Borough of Berlin is granted repose from further "Mt. Laurel" litigation for a period of six (6) years from the date hereof.

3. The Plaintiff and/or any future owner of the tracts (hereinafter "Plaintiff") shall develop its property as set forth on the Conceptual Site Plan, dated December 3, 1988, which is attached hereto and made a part hereof as Exhibit "C". In particular, the following zoning requirements shall apply:

A. Residential - Area, Yard and Bulk Requirements

	<u>Townhouses</u>	<u>Single Family</u>
1. Minimum Lot Size	N/A	12,000 sq.ft.
2. Minimum Lot Width	20 ft.	80 ft.
3. Minimum Lot Depth	N/A	100 ft.
4. Minimum Front Yard	25 ft.	30 ft.
5. Minimum Side Yard	N/A on attached units, 25 ft. between ends of bldgs w/o pkg or drives.	10 ft., combined of 25' where there is less than 25' between houses, then the garage or one story portion of the bldg of at least one (1) lot must be on that side of lot.
6. Minimum Rear Yard (without parking or drives)	20 ft.	30 ft.
7. Max. Bldg. Height	35 ft.(2 Sty)	35 ft.(2 Sty.)
8. Max. Lot Coverage (Building and Paving)	45%	30%

B. Non-Residential Area, Yard and Bulk Requirements
are as shown on Exhibit C.

C. Care has been taken to incorporate as much information as possible on the conceptual Site Plan, dated December 3, 1988, which has been approved by the parties. The zoning criteria shall be as set forth on said site plan and in this Order. Design standards reflected on the plan shall be used; however, where design standards have not been specified, the development plan of plaintiff shall comply with Berlin Borough design standards for developments that contain low or moderate income housing. Any dispute in the application of this paragraph shall be subject to resolution by this Court as set forth herein.

D. Plaintiff agrees to prepare and submit at the time of its application for preliminary subdivision and/or preliminary site plan approval a landscape plan prepared by a landscape architect.

4. The plaintiff shall provide twenty (20%) percent of its townhouse units as lower income housing to be mandatorily set aside, ten (10%) percent to be low, and ten (10%) percent to be moderate income housing. Plaintiff shall contribute the sum of \$25,000.00 in lieu of the construction of any low or moderate income housing in the single family portion of the development. In addition, Plaintiff shall contribute the sum of \$1.25 per square foot of non-residential gross floor area at the time Plaintiff receives a building permit for each such square foot of space.

5. There shall be no permanent rental units and no apartment units.

6. The parties agree that the lower income units shall be constructed and phased in accordance with the schedule set forth in the Ordinance Amendments attached hereto as Exhibit B.

7. The parties agree that the costs of lower income housing shall be administered and monitored as set forth in Exhibit B.

8. The parties agree that the level of affordability of lower income housing shall be monitored as set forth in Exhibit B.

9. The parties desire to clarify the manner in which townhouses may be substituted for single family lots pursuant to the Ordinance Amendments set forth in Exhibit B for properties other than that owned by plaintiff. In the event any such property owner or developer wishes to avail itself of these provisions, such developer or property owner must adhere to the

following criteria:

- A. A lot layout must be prepared that complies with all of the criteria of the Berlin Borough Zoning Ordinance and all other applicable laws to establish the number of single family homes that can be developed on a particular site, given its environmental and other unique features.
- B. The developer or property owner shall designate that portion of the plan that will be developed with townhouse lots and open space, which area and open space shall be satisfactory to the Borough and its various agencies and boards.
- C. The developer or property owner shall prepare a second plan that shows the single family lots, townhouse lots, and proposed areas for public purpose to be developed on the site, all of which shall be satisfactory to Berlin Borough and its agencies and boards.

10. Plaintiff's preliminary plans shall receive expeditious review in order to provide low and moderate income housing to the Borough. Approval of this plan, which shall be based on the Concept Plan but need not meet all of the Borough's criteria for preliminary plan submissions, shall constitute preliminary approval of the development and shall vest in plaintiff those rights set forth in the Municipal Land Use Law to one who has preliminary subdivision and site plan approval of a property. In particular, the information contained in the preliminary plan submission dated April 13, 1989 shall be considered the complete preliminary plan application, except that Plaintiff agrees to submit the required application forms and fees within ten (10) days of the date of this Order. The Planning Board shall grant or deny preliminary plan approval within forty-five (45) days of submission of the complete application. Preliminary approval does not relieve the

plaintiff of the necessity of submitting detailed final subdivision and/or site plans that include all information normally required on preliminary and final plans, including any conditions of preliminary approval for each section of the development as that section is proposed for development.

11. The parties agree that sufficient sanitary sewer and public water facilities and capacity will exist for this development upon completion of the Camden County Municipal Utility Authority ("CCMUA") collection system, which is expected prior to the end of 1989. Water and sewer service and capacity will be available through the completion of construction of the development. There will be no charge for municipal sewer or water connections for any lower income units which are constructed. The issue whether the CCMUA may impose a connection fee is reserved, since a related matter is presently being litigated. Notwithstanding such litigation, nothing shall preclude the subject development from connecting to the CCMUA sewer lines and facilities upon completion of the CCMUA collection system as referred to above. The cost of all lines, valves and facilities on the Haverhill site shall be borne by the developer of the Haverhill site and not by the Borough of Berlin, or the CCMUA.

12. The terms and conditions of this Order shall not be repealed, amended, changed, or modified without the express written consent of the parties and the Court. In the event of any breach of any provisions of this Order, the parties may seek relief by way of any remedy provided by law, including but not

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limited to enforcement by motion brought pursuant to R. 1:10-5 for enforcement of litigant's rights. The assignees of the lands owned by plaintiff are also recognized as third party beneficiaries with authority to enforce the terms of this Order.

13. Any disagreement which may arise as to the terms of this Order shall be resolved by summary application to the trial court, the decision of which shall be final and not appealable. The parties hereby waive the right to appeal any such decision.

14. In the event the Borough or its agencies disapprove of any plans submitted by the plaintiff or its assigns pursuant to this Order, the parties have the right to seek a judicial determination by the Superior Court, Chancery Division, Mount Laurel II Judge as assigned by the Supreme Court, to resolve the controversy, said determination to be binding and not appealable by the parties. For purposes of this Consent Judgment, the Superior Court, Chancery Division, Mount Laurel II Judge assigned shall retain jurisdiction supervision over the development in question and the case and controversy between the parties.

15. The Municipality and/or its boards and agencies shall not rezone or grant variances for parcels containing more than five (5) residential units or one (1) acre of non-residential property or grant any preliminary or final site plan approval for such parcels unless:

(a) The development is expressly subject to the

provisions of Exhibits "A" and "B," which provide for a mandatory setaside for residential units affordable to lower income households as well as the payment of certain fees and sums for non-residential in specified zoning districts (and in some cases, residential) properties; and

(b) The Municipality has met its fair share obligation (that is, the units have either been constructed or granted final plan approval and the plans have been signed and filed).

W L Anthony Gibson
HONORABLE L. ANTHONY GIBSON, J.S.C.

The parties hereby consent to the above Judgment:

WITNESS:

William Zuehl

HAVERHILL, A Partnership of the
State of New Jersey

Stephen D. Samost
STEPHEN D. SAMOST, ESQUIRE,
Attorney for Haverhill,

BOROUGH OF BERLIN

Barbara Gilbert
Borough Clerk

George Botcheos
GEORGE BOTCHEOS, ESQUIRE,
Attorney for the Borough of Berlin
and its agencies and boards

CAMDEN COUNTY MUNICIPAL UTILITIES
AUTHORITY

ATTEST:

Karla Porter

Howard C. Long, Jr.
HOWARD C. LONG, JR., ESQUIRE
Attorney for the Camden County
Municipal Utilities Authority

JUN 15 1989 08:14 LBS

A BOTTLED OFF-STEERED TEL NO: 1-800-757-5094

P. 2
#085 202

STEPHEN D. SAMOST, ESQUIRE
300 North Cooper Road
Berlin, New Jersey 08009
(609) 768-9200
Attorney for Plaintiff, Haverhill

HAVERHILL, a New Jersey Partnership,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
Plaintiff	:	CAMDEN/ATLANTIC COUNTY
	:	DOCKET NO. L-017539-85
	:	
v.	:	
	:	
THE BOROUGH OF BERLIN	:	CIVIL ACTION
a municipal corporation of the	:	
State of New Jersey, THE BOROUGH	:	(Mt. Laurel)
COUNCIL OF THE BOROUGH OF	:	
BERLIN, THE PLANNING BOARD OF	:	
THE BOROUGH OF BERLIN, and the	:	ORDER GRANTING PRELIMINARY
CAMDEN COUNTY MUNICIPAL	:	SITE PLAN AND PRELIMINARY
UTILITIES AUTHORITY,	:	SUBDIVISION APPROVAL
Defendants.	:	<u>NUNC PRO TUNC</u> TO JUNE 12, 1989

THIS MATTER being brought before the Court upon application of Stephen D. Samost, Esquire, attorney for Haverhill, and notice of this application having been given to George Botcheos, Esquire, of the law firm of Laskin and Botcheos, attorneys for the Borough of Berlin, and also to Howard C. Long, Jr., Esquire, of the law firm of Higgins, Slatchetka, and Long, attorneys for the Camden County Municipal Utilities Authority, and upon consideration of plaintiff's Motion and Oral Argument in this matter:

IT IS ON THIS 23 day of *Jun*, 1989,
ORDERED as follows:

1. The actions of the Borough of Berlin Planning Board on Monday, June 12, 1989, regarding the application for Preliminary Subdivision and Site Plan Approval for plaintiff's development are hereby declared to be and are null, void, and of no force or effect.

2. The Preliminary Subdivision and Site Plan Application and Plans, including all subsequent submissions, correspondence and agreements by the applicant are hereby deemed to be and hereby are declared to constitute Preliminary Subdivision and Site Plan Approval nunc pro tunc to Monday, June 12, 1989. Said approval is subject to the agreements made by the applicant and other terms and conditions, which are set forth in Exhibit "A" attached hereto and entitled "Conditions of Approval." This preliminary approval shall vest in the applicant all rights set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., that flow from and with preliminary subdivision and/or site plan approval.

3. Defendants are hereby restrained and enjoined from taking any action in contravention of this Order or the Court's prior Order of April 17, 1989.

4. This court retains jurisdiction; however, the matter is now remanded to the Berlin Borough Planning Board for final subdivision and/or site plan approval by the Planning Board.


HONORABLE L. ANTHONY GIBSON, J.S.C.

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. Plaintiff/applicant agrees to all items required by Remington & Vernick, the Berlin Borough Engineers, in their report dated May 8, 1989, except that certain items agreed upon by the engineer and the applicant will be done as part of final approval rather than as a condition to preliminary approval.

2. Plaintiff/applicant agrees to the following items required by William Queale, Jr., the Berlin Borough Planner, in his Memorandum 89-2 dated May 4, 1989: item 2; item 5; item 6; item 9; item 11 (with the understanding that either or both may not be financial institutions); item 13; item 14; item 17, item 18, item 19, item 20, item 21; item 23 and item

4. Plaintiff/applicant is in partial agreement with the remaining items set forth in Mr. Queale's Memorandum 89-2, as follows:

- Item 1. Applicant have agrees to show the Airport Hazard Zone on the plan.
- Item 3. Applicant agrees to submit these documents at the time of final approval.
- Item 4. All obligations regarding low and moderate income housing and fees in lieu thereof are covered by paragraph 4 of the Final Judgment and Order.
- Item 7. Applicant agrees to provide a street lighting plan for each intersection.
- Item 8. Applicant agrees to provide the sidewalk areas requested for the residential sections of the development. Any consideration of the sidewalks

in the commercial, office or industrial areas should be determined at the time of final plan application on a section by section basis.

Item 10. Item 10(c) need not be met. The landscaping plan details shall be as shown on the landscaping plan.

Item 12. To the extent the planner desires to redesign the loading area at the rear of the larger retail commercial area, such can be negotiated between preliminary and final approval; however, it should not be a condition of or modification to the preliminary plans.

Item 15. Applicant will add to the plans the spaces for the handicapped that are required.

Item 16. The Parking is to remain as shown on the plans. Designation of public areas for trash pick-up and snow removal in the town-house section shall be added to the plans or an easement shall be provided to the Borough to allow for such activities.

Item 22. Applicant agrees to provide a Traffic Impact Study and provide for our fair share of traffic improvements to Cross-Keys Road and/or Watsontown-New Freedom Road, which improvements include those shown on the plans at this time.

Item 25. Applicant will provide trash pick-up locations in the office, flex space, and retail commercial areas.

3. Plaintiff/applicant agrees to the following additional items requested by the Berlin Borough Planning Board:

- a. Applicant agrees to submit the design of the pumping station for review and approval by the Berlin Borough Planning Board;
- b. Applicant agrees to extend the public road on the west side of the development from the residential areas behind the existing and proposed commercial development to Watsontown-New Freedom Road for easier fire access. The road will be constructed to meet all engineering requirements and will be dedicated to the Borough of Berlin.

4. Preliminary Subdivision and Site Plan Approval is also conditioned upon the plaintiff/applicant obtaining approvals from the Camden County Planning Board and the New Jersey Department of Environmental Protection for Sanitary Sewer Extension Approval.

STEPHEN D. SAMOST, ESQUIRE
 300 North Cooper Road
 Berlin, New Jersey 08009
 (609) 768-9200
 Attorney for Plaintiff, Haverhill

*It is further ordered
 that the drafter of this
 order submit a copy
 to all adversaries.*

HAVERHILL, a New Jersey
 Partnership,

Plaintiff

v.

THE BOROUGH OF BERLIN
 a municipal corporation of the
 State of New Jersey, THE BOROUGH
 COUNCIL OF THE BOROUGH OF
 BERLIN, THE PLANNING BOARD OF
 THE BOROUGH OF BERLIN, and the
 CAMDEN COUNTY MUNICIPAL
 UTILITIES AUTHORITY,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION
 : CAMDEN/ATLANTIC COUNTY
 DOCKET NO. L-017539-85

: CIVIL ACTION
 : (Mt. Laurel)

: ORDER

THIS MATTER being brought before the Court upon application of Stephen D. Samost, Esquire, attorney for Haverhill, and notice of this application having been given to George Botcheos, Esquire, of the law firm of Laskin and Botcheos, attorneys for the Borough of Berlin, and also to Howard C. Long, Jr., Esquire, of the law firm of Higgins, Slatchetka, and Long, attorneys for the Camden County Municipal Utilities Authority, and upon consideration of plaintiff's Motion and Oral Argument in this matter:

IT IS ON THIS 5th day of June, 1990,

ORDERED as follows:

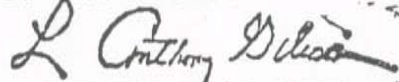
1. The Borough of Berlin shall execute the plaintiff's CP-1 Sanitary Sewer Application, along with related documents,

and forward same immediately to defendant Camden County Municipal Utilities Authority; and

IT IS HEREBY FURTHER ORDERED that defendant Camden County Municipal Utilities Authority shall review and approve said application within ten (10) days of receipt of same, unless defendant Camden County Municipal Utilities Authority finds that said application and/or plans are inconsistent with the preliminary plans previously approved by this Court by Order of June 23, 1989 and so notifies plaintiff Haverhill within three (3) days of ascertaining same; and

IT IS HEREBY FURTHER ORDERED that the execution by defendant Borough of Berlin of plaintiff's CP-1 Application shall be without prejudice to the right and ability of the defendant Borough of Berlin to request Haverhill to provide a different pumping station design, which issue is presently pending before the Court as part of plaintiff's Motion for a Judicial Determination and/or Interpretation.

BY THE COURT:



L. ANTHONY GIBSON, J.S.C.

SDS/113

It is further ordered
that the drafter of this
order submit a copy
to all adversaries.

FILED
L. ANTHONY GIBSON
J.S.C.

STEPHEN D. SAMOST, ESQUIRE
300 North Cooper Road
Berlin, New Jersey 08009
(609) 768-9200
Attorney for Plaintiff, Haverhill

HAVERHILL, a New Jersey Partnership,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
Plaintiff	:	CAMDEN/ATLANTIC COUNTY
	:	DOCKET NO. L-017539-85
v.	:	
THE BOROUGH OF BERLIN	:	
a municipal corporation of the	:	CIVIL ACTION
State of New Jersey, THE BOROUGH	:	
COUNCIL OF THE BOROUGH OF	:	(Mt. Laurel)
BERLIN, THE PLANNING BOARD OF	:	
THE BOROUGH OF BERLIN, and the	:	
CAMDEN COUNTY MUNICIPAL	:	
UTILITIES AUTHORITY,	:	
Defendants.	:	ORDER

THIS MATTER being brought before the Court upon application of Stephen D. Samost, Esquire, attorney for Haverhill, and notice of this application having been given to George Botcheos, Esquire, of the law firm of Laskin and Botcheos, attorneys for the Borough of Berlin, to Michael G. Brennan, Esquire, of the law firm of Brennan & Bernardin, attorneys for the Camden County Planning Board, and also to Howard C. Long, Jr., Esquire, of the law firm of Higgins, Slatchetka, and Long, attorneys for the Camden County Municipal Utilities Authority, and upon consideration of plaintiff's Motion and oral argument in this matter:

IT IS ON THIS 5th day of February, 1991,
ORDERED as follows:

1. The challenge to Ordinance 90:6, entitled (Ordinance

Amending and Supplementing Chapter 60 of the Code of the Borough of Berlin entitled "Sewer") is moot and has been withdrawn by plaintiff. Defendants agree that they will impose no connection charge or other fees (including but not limited to sewer, water or building permit) upon any of the low or moderate income housing units being constructed as part of the Haverhill development; and

IT IS HEREBY FURTHER ORDERED that the prior Court Orders in this matter dated April 17, 1989; June 23, 1989; and June 5, 1990, are hereby amended and modified so as to provide for the satisfaction of plaintiff's low and moderate income housing obligation through the construction of forty (40) one bedroom condominium flats in the development's townhouse section. Said units shall be located in the ten (10) locations of four (4) dwelling units as shown on Sheet 2 of 14, Site Plan, revised to January 16, 1991, prepared by Gudmund S. Winters, P.E. Each group of four (4) units shall consist of two (2) low income and two (2) moderate income units. The townhouse units shall consist of one hundred sixty (160) market-level units; and

IT IS HEREBY FURTHER ORDERED that the prior Court Orders in this matter are hereby modified and amended to increase plaintiff's contribution in lieu of construction of low and moderate income units in the R-1 zone from the previous amount of \$25,000.00 to a sum equal to \$1,000.00 per single family unit, a present total of \$51,000.00 to be paid prior to receipt of a Certificate of Occupancy for each such unit; and

IT IS HEREBY FURTHER ORDERED that the failure of the Camden County Planning Board to review and report on the Haverhill preliminary subdivision and site plan application in a timely manner as set forth in N.J.S.A. 40:27-6.3 and 6.7 requires the modification and amendment of any and all prior Orders of this Court in this matter to delete and excise any condition of approval requiring Camden County Planning Board approval under N.J.S.A. 40:55D-61, since approval is deemed to have been given under the statutes; and

IT IS HEREBY FURTHER ORDERED that the preliminary plans, revised to January 16, 1991 are hereby deemed the approved preliminary plans, and the following additional modifications and amendments to the prior Court Orders in this matter are to be made to the final plans:

- A. Details relating to the extent and location of lighting, landscaping, and trash removal in the non-residential portions of the Haverhill development shall be submitted with the final site plans for each such section of the development.
- B. Documents relating to low and moderate income housing administration, homeowners association documents, and proposed restrictions on the uses not permitted on the site are to be submitted for review by the Borough Solicitor at the first section of final subdivision approval.
- C. A revised circulation plan layout shall be submitted for the rear of the larger shopping center, so as to facilitate tractor-trailer movement in that area.

The remaining comments of the planner and engineer of the defendant Borough of Berlin have been addressed by the plaintiff in the approved preliminary plans.

Except as modified herein, all of the terms and conditions of the prior Court Orders in this matter shall and hereby do remain in full force and effect.

BY THE COURT:


L. ANTHONY GIBSON, J.S.C.

SDS/150PFS

STIPULATION OF SETTLEMENT BETWEEN THE BOROUGH OF
BERLIN AND HAVERHILL, A NEW JERSEY PARTNERSHIP, OF THE
PENDING MOTION TO AMEND SUBDIVISION AND SITE PLAN
APPROVALS TO ELIMINATE UNNECESSARY COST-GENERATING
ITEMS

1. The Court will enter an Order embodying the final, agreed-upon settlement terms. The Order will grant amended preliminary subdivision and site plan approval for the Haverhill project, nunc pro tunc, to the date of the prior approval and will also grant final subdivision and site plan approval for the residential portions of the development. A Site Development Plan for the development prepared by G. S. Winters & Associates, Inc., dated July 18, 1994, with revision No. 5, dated December 30, 1994, is attached hereto as Exhibit A. It is the intent of the parties that the attached residential layout represents the final, agreed-upon layout and will not be modified or amended unless same is required to satisfy the terms of settlement set forth herein or to satisfy the comments or conditions of another governmental agency. The non-residential portions of the development will proceed as set forth below. The non-residential uses permitted shall be as shown on Exhibit A or as set forth in the Berlin Borough Zoning Ordinance. This stipulation of settlement, which incorporates Exhibit A revised to December 30, 1994, shall be attached to and become part of the Court Order.
2. Any and all sums becoming due and owing to the Borough of Berlin for professional fees, application fees and escrow fees shall be paid to the borough within 30 days of Haverhill's receipt of an invoice for services.
3. All real estate taxes for the property which is the subject of this stipulation of settlement shall be paid current at the time of the issuance of the first building permit and thereafter according to law.
4. All future reviews of the Haverhill development shall be conducted by the borough council, acting as a planning board. Haverhill will pay the application fees and escrow fees normally charged for the review of any plans; however, Haverhill shall only be responsible to pay such fees to the extent that the review is by one of the borough's professionals. Inspection escrows, charges and fees by the borough will be limited to the amounts presently set by borough ordinance.
5. The apartment units shown on Exhibit A shall be limited to senior citizens age 55 and over and shall have a parking requirement of one (1) parking space/unit plus at least ten (10) additional "phantom" parking spaces which will be landscaped until needed for the senior citizen housing.
6. A minimum of 40 senior citizen apartment units shall be constructed, all of which shall be deed-restricted to occupancy by lower income households with half the units restricted to low income households and half restricted to moderate income households, the cost of the individual units to be skewed according to the rules and regulations of the New Jersey Council on Affordable Housing. In addition to all sums Haverhill must pay

the borough pursuant to borough ordinance and/or previous court orders in lieu of the construction of low and/or moderate income housing, the provision for 40 senior citizen housing units shall satisfy Haverhill's obligation to provide affordable housing within the development.

7. For all public streets, street rights-of-way shall be 50 feet and the street cartways shall be 30 feet, except in the townhouse section where pavement widths shall be shown at 30 feet, or 32 feet as shown on Exhibit A to allow for curb-side guest parking, and except as further shown on Exhibit A for three (3) and four (4) lanes of traffic on the county roads, Berlin Cross-Keys Road and Watsontown-New Freedom Road. All road rights-of-way shall be as identified on the plans, and all roads shall be clearly identified on Exhibit A as public or private. All other circulation and parking facilities will be private and will be maintained by the owner of that particular portion of the property.

8. Exhibit A reflects a stub road extending to the Carriage Stop development (Road "C"). The extension of this right-of-way toward Berlin-Cross Keys Road is also shown on Exhibit A. This extension of roadway shall not be constructed by the developer; however, the borough may construct said roadway after 120 of the single-family and townhouse units at the Haverhill development have been issued construction permits.

9. Haverhill shall contribute the sum of \$1,280.00 at the time of the issuance of construction permits for each single-family and townhouse dwelling for the first 120 of said dwelling units. Said funds shall be deposited in an interest-bearing account established by the Borough of Berlin for the construction of the roadway extension of Road "C," (24-foot wide) as shown on Exhibit A. Subject to the provisions of Paragraph 6 above, the borough may construct said roadway at any time in the borough's discretion. Should the borough not construct said roadway within five (5) years after the 120th residential unit has been issued a construction permit and all payments have been made by developer pursuant to this provision, all deposits pursuant to this paragraph shall be returned to Haverhill, and the borough shall bear the financial responsibility for the construction of said road should the borough choose to have same constructed. Haverhill shall insert a provision in each agreement of sale and in each deed clearly advising the grantee of the borough's right to exercise title to the land necessary to construct the road referred to in this paragraph. The specific language to be set forth in each agreement of sale and deed shall be as follows:

Purchase of the property referred to in this deed is subject to the right of the Borough of Berlin to construct or to cause to be constructed that certain road identified on the final plans for Haverhill prepared by G. S. Winters & Associates, dated July 18, 1994, and revised to December 30, 1994, as a 50' wide R.O.W. for future road connection if desired by Berlin Borough.

10. Haverhill shall be solely responsible for the construction of that portion of Roadway "C" extending from the Carriage Stop development to the first intersection of the Haverhill

development on the west side of Berlin-Cross Keys Road.

11. At least a four (4) foot pedestrian walkway and a 24-foot wide access roadway, between Road "C" and the proposed retail commercial areas at the corner of Berlin-Cross Keys Road will be constructed by Haverhill up to Watsontown-New Freedom Road.

12. The layout of the townhouses on the eastern side of Berlin-Cross Keys Road shall be as shown on Exhibit A. The roads, driveways, and buffer details shown on said exhibit shall conform with Queale Memo 92-9.

13. The borough will waive all municipal application, hook-up, connection or tie-in fees or charges for water and sewer for all senior citizen low and/or moderate income housing units. Haverhill will pay all other governmental fees and all fees payable to third-party contractors for the low/moderate income units, including building permit fees.

14. The developer shall provide performance and maintenance guarantees as mandated by N.J.S.A. 40:55D-1, et seq.

15. Landscaping shall consist of street trees in accordance with ordinance provisions as shown on Exhibit A; a buffer between the existing industrial area and the proposed residential units that will be constructed adjacent to the industrial area; and a buffer to the side or rear of all residential units that abut Cross-Keys Road. The existing hedgerow that divides Haverhill from Centennial Square shall remain and be noted as a 12-foot buffer easement. It should be noted, that all residential lots are proposed to be transferred in fee simple and that no common areas are proposed. In addition, it should also be noted that nothing contained in the documents shall preclude a builder from offering a landscaping package as part of the development of the site.

16. The developer shall provide sidewalks on one side of the street in all residential portions of the development and where indicated on Exhibit A for all non-residential portions of the development. The developer shall be required to extend the sidewalk off-site along Cross Keys Road to connect to the sidewalk in the Centennial Square development.

17. The pumping station and force main shall be constructed by Haverhill in accordance with the specifications set forth by Remington & Vernick Engineers on behalf of the borough. Additionally, design and construction of the pumping station is subject to additional review by the borough engineer at the time of final approval. Haverhill shall post a bond or irrevocable letter of credit prior to the issuance of the first building permit to ensure construction of said pumping station, force main and the cost of direct connection to the CCMUA sewer line and connecting to the Borough of Berlin connection system.

18. The sewage from the residential portions of the Haverhill development shall tie directly into the Camden County MUA manhole on Cross Keys Road on a temporary basis, or in such other manner and subject to conditions acceptable to the CCMUA. Haverhill specifically agrees that under no circumstances will sewage from the proposed development flow through the Centennial Square development. It is the specific understanding of the parties hereto that the Borough of Berlin shall incur no additional

costs whatsoever as a result of Haverhill's connection to the CCMUA. Haverhill shall disconnect the direct connection to the CCMUA sewer system at such time as it constructs the pump station and force main indicated on Exhibit A and referred to in Paragraph 17 hereof.

19. A cash contribution of \$500.00 for each dwelling unit shall be made at the time of the issuance of a building permit in lieu of the construction of recreational facilities, which funds shall be paid to the borough for its use at other nearby recreational facilities in the borough. This provision shall not apply to low or moderate income residential units. In lieu of said payment, at the request of the borough, Haverhill shall construct recreation improvements on a site(s) provided by the borough.

20. There will be no homeowners association for the project. All open spaces within the residential areas will be dedicated to the borough for its use and improvement. The lands designated for basins within the non-residential portions of the site shall remain within the ownership of and be the responsibility of the developer.

21. A ten (10) foot side yard will be allowed in the R-1 zone for single-family residential detached units consistent with the Court Orders of April 17, 1989 and June 23, 1989 allowing ten (10) foot side yards, provided there is at least 25 feet between buildings, or where there is less than 25 feet between buildings, a one-story portion of the building on at least one (1) lot must be on that side of the lot having less than 25 feet between buildings.

22. Final plans for townhouse lots submitted for approval shall include detailed drawings showing acceptable designs for walls, fences, patios or decks in order to establish compatible architectural features, dimensions, heights, etc.

23. The deeds to all townhouse lots shall contain a deed restriction to maintain architectural features, lawns, shrubbery, and to either control or prohibit such elements as sheds, fences, walls, etc. The language of said deed restrictions shall be subject to review and approval by the municipal attorney.

24. The terms and conditions of this stipulation of settlement, and more specifically all requirements and responsibilities of Haverhill shall inure to the benefit of and shall be binding upon any person or entity acquiring any of Haverhill's rights to the subject development and to Haverhill's lessees, heirs, successors and/or assigns.

25. In addition to and notwithstanding all of the above, Haverhill specifically agrees to comply with the underlined items in a letter from Remington & Vernick Engineers, dated December 19, 1994, concerning the amended preliminary and final major subdivision and site plan for Haverhill, modified as follows:

III. PERFORMANCE STANDARDS

A. Vehicular Circulation

5. The streets will be constructed having a minimum 0.5 percent slopes. However, if there is ponding, same shall be addressed by Haverhill to the satisfaction of the borough engineer prior to the release of bonds.
9. This item shall be deferred until final approval.
10. This item shall be deferred until final approval.
12. The street names have been approved.

B. Pedestrian Circulation

5. No sidewalks will be constructed along Watsontown-New Freedom Road.

C. Construction Details

1. Development may proceed with two (2) inches FABC-1 on five (5) inches stabilized base for local and collector roads as proposed by Haverhill.

D. Stormwater Management Plan and Grading

4. The basins shown on the current plans discharge into a temporary basin and then into the existing county storm drainage system. Haverhill shall obtain approval to discharge into the county system and Haverhill shall provide Remington & Vernick with a drainage map and calculations for review and approval.
5. The basins in the residential areas to be owned and maintained by the Borough of Berlin shall be identified on the plans as Basin No. 1 and Basin No. 2. The basins to be owned and maintained by Haverhill shall also be identified as Basins 3 through 6 on said plans.
8. The grading plan is satisfactory, however, the plans shall clarify that a separate eight (8) inch HDPE line is to be installed.
- 15-
19. Haverhill need not comply with these comments.

- No. 33. Appropriate easements should be obtained or the flow should be redirected or it must be demonstrated to the satisfaction of Remington & Vernick that the flow has not been increased as a result of the construction of Basin No. 2.
21. The applicant shall discuss this item with the county and shall determine whether an easement is necessary. If an easement is necessary, Haverhill will provide Remington & Vernick with an analysis of the down stream path of the discharge and shall show a channel for the discharge on the plans.

E. Utilities

1. Haverhill shall indicate specific easements on the plans for water, storm and sanitary sewer within commercial areas at the earlier of either the filing of final plans for the residential section that requires them or submission of final plans for commercial areas.
3. The water main valves shall be installed as shown on the plans.
4. Haverhill shall install 22 fire hydrants at locations determined and approved by the Berlin Borough Fire Official. Haverhill shall also install a 12-inch water line on Cross Keys Road to connect with the water lines crossing points on Cross Keys Road a distance of approximately 1,200 linear feet. Additionally, Haverhill shall connect the 8-inch water line running behind the proposed development on the east side of Cross Keys Road into the Winslow Township water main at Watsonstown-New Freedom Road. In return, Haverhill shall receive a credit in the amount of \$10,000 toward the sum it must contribute to the Berlin Borough Affordable Housing Fund pursuant to Section 84-26.1 et seq., of the Code of the Borough of Berlin or as modified pursuant to previous orders entered by the Court in the case of Haverhill v. Borough of Berlin, et al., Docket No. L-017539-85.
5. This comment is subject to Paragraph 4 above.
7. Haverhill shall show the exact field location of the pump station and force main on the plans and in addition shall show a profile of the force main including materials. The plans shall also show full electrical detail for the pump station and force main.
8. See comment to E.(1) above.

F. Planting Design

2. Haverhill shall comply with Subsections A through F for the residential portion of the development only. Landscaping for the commercial areas shall be subject to review and approval at the time of final approval.

5&6. See item No. 10 of the settlement agreement referring to Queale Memo 92-9.

G. Lighting

2. The lighting scheme set forth on the plans revised to December 30, 1994 is acceptable. However, the spacing of lighting in the commercial areas is subject to review and approval at the time of final approval.

H. Trash Enclosure

1. Trash enclosures for the commercial areas shall be shown on the plans and are subject to review and approval at the time of final approval.

I. Environmental

This comment is subject to Paragraph 26 below.

26. Notwithstanding any of the above, final approval of the development is specifically conditioned upon the applicant's obtaining any and all necessary approvals from Camden County, the Camden County Planning Board, Camden County Municipal Utilities Authority, Camden County Soil Conservation District, Berlin Borough Water and Sewer Departments, New Jersey Department of Environmental Protection, New Jersey Pinelands Commission and any other local, county, state or federal departments or agencies having jurisdiction over any phase of the development.

Date: 1/17/95



Clarke Caton Hintz

Architecture

Planning

Landscape Architecture

Appendix E.

Nexus LLC Site Commitment to Construct Rental Units

Elizabeth K. McManus

From: Oberlander, David [David.Oberlander@flastergreenberg.com]
Sent: Friday, August 08, 2008 4:17 PM
To: surenian
Cc: Brian Slauch; Elizabeth K. McManus; Elizabeth Calhoun McKenzie; Stuart
Subject: RE: Berlin-Nexus

We will be providing rental units.

From: surenian [mailto:jrs@surenian.com]
Sent: Wednesday, August 06, 2008 12:52 PM
To: Oberlander, David
Cc: 'Brian Slauch'; 'Beth McManus'; Elizabeth Calhoun McKenzie; 'Stuart'
Subject: Berlin-Nexus
Importance: High

Dear David,

Please advise whether the affordable units your client provides will be for-sale or for-rent.

We need to know immediately in that we need to file an affordable housing plan by the end of the month to meet the deadline the court has imposed.

Thank you for your prompt attention to this matter.

Jeff Surenian



Clarke Caton Hintz

Architecture

Planning

Landscape Architecture

Appendix F.

Special Needs Facilities Documentation

JOSEPH C. KESKES, Mayor
BARBARA GILBERT, Administrator



BLACKWELL S. ALBERTSON, JR., CTA
Tax Assessor
LISA EGGERT, Tax Collector

Municipal Building
59 South White Horse Pike
Berlin, New Jersey 08009

CHARLEEN SANTORA, RMC
Borough Clerk
Phone: (856) 767-7777
Fax: (856) 753-9122

November 3, 2005

Ms. Pamela Weintraub, COAH Planner
Council on Affordable Housing
101 South Broad St.
P.O. Box 813
Trenton, N.J. 08625

RE: Documentation on group homes and Alternate Living Arrangement facilities

Dear Ms. Weintraub:

Per your direction, I have located the above referenced facilities in Berlin Borough that qualify as affordable housing facilities.

Enclosed is a list provided by Michael Biglin, from the Department of Human Services. (The three facilities registered with the department contain eight bedrooms.) There are two properties in Mr. Biglin's report that are not in the Borough of Berlin, which I have noted.

Also enclosed is a certification from Glen Schmidt, of Behavioral Health Resources Inc., for their facility. Mr. Schmidt's letter does not include the number of bedrooms, however states the property houses six people that meet the Agency's criteria for housing. I am providing you with a copy of the property record card for the facility indicating it contains four bedrooms. I trust this documentation is acceptable for your needs.

As per your instructions, I will provide James Miller, Borough Planner, with this information so he can incorporate it into the third round plan and will reduce the Borough's second round by 12 units.

Thank you for your assistance and courtesies in this matter.

Very truly yours,

Barbara Gilbert
Administrator

Cc: Mayor & Council w/o encl.
James Miller, w/encl.
George Botcheos, Esq. w/encl.
J. Gangluff, Planning Board Chairman, w/encl.

JOSEPH C. KESKES, Mayor
BARBARA GILBERT, Administrator



BLACKWELL S. ALBERTSON, JR., CTA
Tax Assessor
LISA EGGERT, Tax Collector

Municipal Building
59 South White Horse Pike
Berlin, New Jersey 08009

CHARLEEN SANTORA, RMC
Borough Clerk
Phone: (856) 767-7777
Fax: (856) 753-9122

September 26, 2005

Mr. Michael Bigland
Division of Development disabilities
221 Laurel Road
Suite 210
Voorhees, N.J. 08043

Re: Registration of group homes and/or Alternate Living Arrangement

Dear Mr. Bigland:

I was referred to you by Pam Weintraub from the Council on Affordable Housing (COAH) for information on group homes within the Borough of Berlin.

The Borough of Berlin is responsible to provide affordable housing units and we just learned that group homes or alternative living arrangement properties established after April 1, 1980 qualify toward the boro's affordable housing obligation. I understand from Ms. Weintraub that each bedroom in these homes count as one affordable housing unit. To determine the boro's obligation, I need to know what homes are registered in the Boro of Berlin and how many bedrooms are in each home. Ms. Weintraub suggested your agency could provide me with this information.

Your assistance and cooperation in this matter is very much appreciated. If you need additional information or have any questions, please contact me at 856-767-7777, ext. 113.

Very truly yours,

Barbara Gilbert
Administrator

Cc: Mayor & Council
J. Gangluff, Planning Board Chairman
George Botcheos, Esq.
Stuart Platt, Esq.
James Miller, Planner



State of New Jersey

Department of Human Services
Division of Developmental Disabilities

Community Services • Southern Region

Carol Grant
Director

Gregory Fenton
Deputy Director

Charlotte O'Neill
Regional Administrator

RICHARD J. CODY
Acting Governor

James M. Davy
Commissioner

CONFIDENTIAL

Barbara Gilbert
Administrator
Borough of Berlin
50 South White Horse Pike
Berlin, New Jersey 08009

October 20, 2005

Dear Ms. Gilbert,

I have received your inquiry concerning the number of residential programs the Division of Developmental Disabilities operates within the Borough of Berlin Camden County. Enclosed is a printout of all of the residential programs contained within your jurisdiction including our Community Care Residence programs which I believe will also qualify toward your COAH obligation. As you will note I have indicated the number of bedrooms in each program, as this will provide your community with additional credits as set forth in the COAH standards.

If I can be of any further assistance please do not hesitate to contact me at 856-770-5418. Good luck with you certification process.

Sincerely,

Michael P. Biglin
Community Development Director
Division of Developmental Disabilities
Southern Regional Office



PROGRAM TYPE	PROVIDER/ADDRESS/PHONE/COMMENT	ID NUMBER COUNTY	LICENSED CAPACITY	REAL CAPACITY	BEGINNING OF MONTH CENSUS
CITY: BERLIN					
# Bedroom	KELSCH/4 BLATHERWICK DR. 4 BLATHERWICK DRIVE BERLIN, NJ 08009 (856)767-0096	GH059 CAMDEN ONE CONSUMER WITH HEPATITIS	6	6	6
③ GH	PILOT/26 CONSTITUTION BLVD 26 CONSTITUTION BLVD BERLIN, NJ 08009 (856)753-4279	GH595 CAMDEN ONE CONSUMER WITH HEPATITIS	5	5	5
③	OH Camden ARC 322 Stratford Ave. West Berlin, NJ 08091 <u>Berlin Township</u>	3 3 3			

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#16
Baltimore

PROGRAM	ID NUMBER	LICENSED	REAL	BEGINNING OF
TYPE	PROVIDER/ADDRESS/PHONE/COMMENT	CAPACITY	CAPACITY	MONTH CENSUS

4	CITY: BERLIN			
5	SD	RUCKER, FELITIA	V07164868100	1
6		3 BRIARHILL ROAD		1
7		BERLIN, NJ 08009	CAMDEN	1
8		(856)809-9489		
11	SD	SERRANO, ILLUMINADA & MARIO	V20038308700	2
12		241 NEW BROOKLYN RD.		2
13		BERLIN, NJ 08009	CAMDEN	2
14		(856)753-0293		
15	Not Berlin Boro			

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STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF FIRE SAFETY

LIFE HAZARD USE CERTIFICATE OF REGISTRATION

ISSUED: 11/30/04

OWNER NO: F-222298243

REGISTRATION NO: 0405-47197-001-01

KELSCH ASSOCIATES
368 BROADWAY
WESTVILLE NJ 08093-1152

BERLIN GROUP HOME
4 BLATHERWICK DRIVE
BERLIN NJ

BUILDING HEIGHT: 012 FEET

NUMBER OF STORIES: 01

USE TYPE CODE: AD03

DESCRIPTION: HALFWAY HOUSES, GROUP HOMES, COMMUNITY RESIDENCES, RESIDENTIAL CHILD CARE FACILITIES AND RESIDENTIAL HEALTH CARE FACILITIES, ALCOHOL AND DRUG TREATMENT CENTERS, YOUTH HOSTELS, HOMELESS SHELTERS AND OTHER SIMILAR FACILITIES WITH A MAXIMUM PERMITTED OCCUPANCY OF FEWER THAN 50 PERSONS.

LEA CODE: 0405001

THE LAW REQUIRES THAT THIS CERTIFICATE OF REGISTRATION BE POSTED IN A CONSPICUOUS LOCATION IN THE REGISTERED PREMISES BUT ONLY UPON SUBSEQUENT RECEIPT OF A CERTIFICATE OF INSPECTION.

THIS CERTIFICATE IS NOT TRANSFERRABLE. IN THE CASE OF ANY TRANSFER OF TITLE, IT SHALL BE THE DUTY OF THE NEW OWNER(S) TO FILE WITH THE COMMISSIONER WITHIN THIRTY DAYS OF SUCH TRANSFER AN APPLICATION FOR A NEW CERTIFICATE OF REGISTRATION. IN THE CASE OF ANY CHANGE IN INFORMATION PROVIDED ON THE REGISTRATION APPLICATION FORM, IT SHALL BE THE DUTY OF THE OWNER TO NOTIFY THE DEPARTMENT OF COMMUNITY AFFAIRS WITHIN THIRTY DAYS OF SUCH CHANGE.

FAILURE TO COMPLY WITH THESE REQUIREMENTS CONSTITUTES A VIOLATION OF P.L. 1983, c.383 OF THE LAWS OF NEW JERSEY AND SUBJECTS THE PARTY SO VIOLATING TO THE PENALTIES THEREIN.

COMMISSIONER OF COMMUNITY AFFAIRS
SUSAN BASS LEVIN



STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS
DIVISION OF FIRE SAFETY

Since 1997

LIFE HAZARD USE CERTIFICATE OF REGISTRATION

ISSUED: 06/1

OWNER NO: F-

REGISTRATION NO:

PERSONALIZED IND LIVING OPPOR-
TUNITIES & TRAINING SVC INC
289 JACKSON RD
BERLIN NJ 08009

CONSTIT
26 CONS
BERLIN NJ

BUILDING HEIGHT:

NUMBER OF STORIES: 01

USE TYPE CODE:

A003

DESCRIPTION:

HALFWAY HOUSES, GROUP HOMES, COM-
MUNITY RESIDENCES, RESIDENTIAL
CHILD CARE FACILITIES AND RESIDEN-
TIAL HEALTH CARE FACILITIES,
ALCOHOL AND DRUG TREATMENT CENTERS,
YOUTH HOSTELS, HOMELESS SHELTERS
AND OTHER SIMILAR FACILITIES WITH A
MAXIMUM PERMITTED OCCUPANCY OF
FEWER THAN 50 PERSONS.

LEA CODE: 0405001

THE LAW REQUIRES THAT THIS CERTIFICATE OF REGISTRATION BE POSTED IN A CONSPICUOUS LOCATION IN THE REGISTERED PREMISES BUT ONLY UPON SUBSEQUENT RECEIPT OF A CERTIFICATE OF INSPECTION.

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FAILURE TO COMPLY WITH THESE REQUIREMENTS CONSTITUTES A VIOLATION OF P.L. 1983, c.383 OF THE LAWS OF NEW JERSEY AND SUBJECTS THE PARTY SO VIOLATING TO THE PENALTIES THEREIN.

COMMISSIONER OF COMMUNITY AFFAIRS
SUSAN BASS LEVIN

NEW JERSEY UNIFORM FIRE CODE

CERTIFICATE OF INSPECTION

Issued By: BUREAU OF FIRE PREVENTION
BOROUGH OF BERLIN
P.O. BOX 226
BERLIN, NJ 08009
(856) 767-6839
LEA Code # 0405-001

Date: September 7, 2005

Issued To: Constitution Group Home
26 Constitution Blvd.
Berlin, NJ 08009

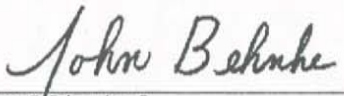
Reg #: 0405-57613-001-01

Expiration Date: July 28, 2006

THIS CERTIFIES THAT THE REFERENCED PROPERTY HAS BEEN INSPECTED
PURSUANT TO THE UNIFORM FIRE SAFETY ACT AND SATISFIES MINIMUM
REQUIREMENTS OF THE NEW JERSEY UNIFORM FIRE CODE.

THIS CERTIFICATE MUST BE POSTED IN A CONSPICUOUS LOCATION IN
THE ABOVE PREMISES.

Date



Fire Official
John E. Behnke

NEW JERSEY UNIFORM FIRE CODE

CERTIFICATE OF INSPECTION

Issued By: BUREAU OF FIRE PREVENTION
BOROUGH OF BERLIN
P.O. BOX 226
BERLIN, NJ 08009
(856) 767-6839
LEA Code # 0405-001

Date: November 10, 2003

Issued To: BERLIN GROUP HOME
4 Blatherwick Drive
Berlin, NJ 08009

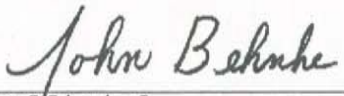
Reg #: 0405-47197-001-01

Expiration Date: November 6, 2003

THIS CERTIFIES THAT THE REFERENCED PROPERTY HAS BEEN INSPECTED
PURSUANT TO THE UNIFORM FIRE SAFETY ACT AND SATISFIES MINIMUM
REQUIREMENTS OF THE NEW JERSEY UNIFORM FIRE CODE.

THIS CERTIFICATE MUST BE POSTED IN A CONSPICUOUS LOCATION IN
THE ABOVE PREMISES.

Date



Fire Official
John E. Behnke



Clarke Caton Hintz

Architecture

Planning

Landscape Architecture

Appendix G.

DRD Developers Approving Resolution

MARRAZZO & PLATT, P.C.

Attorneys at Law

May 23, 2006

JOSEPH A. MARRAZZO, JR.*
STUART A. PLATT*

*Member of NJ and NY Bar

Borough of Berlin
59 South White Horse Pike
Berlin, New Jersey 08009

Attention: Barbara Gilbert-Borough Administrator

**RE: COAH Developments
Our File No. 7416-L008**

Dear Barbara:

Pursuant to Borough Council's request, enclosed please find resolutions granting approval for DRD Developers, Inc. and Berlin Retail granted by the Berlin Planning Board on May 8, 2006. The DRD Developer application is for six one-story townhouse units of which one shall be an affordable housing unit. The Berlin Retail application approved a Dunkin Donuts building and a retail building and the applicant shall make a contribution to the Housing Trust Fund in accordance with current ordinance.

If you have any questions or comments, please do not hesitate to contact me.

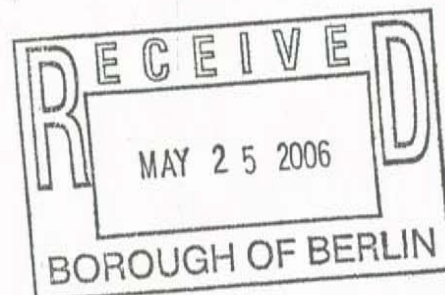
Very truly yours,

STUART A. PLATT
For the Firm

SP:fa

cc: Jacob Gangluff-Planning Board Chairman (w/encl.)
Valerie Tarus-Planning Board Secretary (w/encl.)

Enclosure



**BERLIN BOROUGH
PLANNING BOARD**

RESOLUTION MEMORIALIZING DECISION

- ☒ Approved
- ☒ General Conditions
- ☒ Additional Conditions
- ☐ Denied

- ☐ Minor Subdivision
- ☐ Major Subdivision
Preliminary

Application No. 06:4-20
Applicant: DRD Developers, Inc.
431-A Commerce Lane
W. Berlin, New Jersey 08091

- ☐ Major Subdivision,
Final
- ☐ Minor Site Plan
- ☒ Major Site Plan,
Preliminary
- ☒ Major Site Plan, Final
- ☐ Conditional Use
- ☒ Waivers
- ☒ Use Variance
- ☐ Site Plan Waivers
- ☐ Bulk Variance

Owner: DRD Developers, Inc.

Block 1102, Lots 3.01
Action: May 8, 2006
Memorialized: June 12, 2006
Plan Name: 45 E. Taunton Avenue
Condominium

WHEREAS, the applicant has applied to the Berlin Borough Planning Board for the following approval:

A preliminary major site plan approval and final major site plan approval in order to construct six one-story townhouse units located within a two-story building together with a use variance from Section 335-80 where multi-family structures are not a permitted principal use in the R-2 residential districts (townhouses are only permitted in developments providing a portion of the affordable housing obligation) and a use variance from Section 335-80 of the Borough Code and N.J.S.A. 40:55D-70(d)(5) to permit a density of 7.37 dwelling units per acre where a maximum of 3.75 dwelling units per acre are allowed together with:

- (a) A submission waiver from providing the location of trees greater than 6 inches in diameter;
- (b) A submission waiver from Section 335-30B from providing an environmental impact report;

- (c) A waiver from Section 335-39.N.(1) from providing a minimum bottom slope of two percent in the stormwater basin;
- (d) A waiver from Section 335-40.B from constructing a portion of the driveway between the street right-of-way and cartway concrete;
- (e) A waiver from Section 335-45 from providing additional landscape plantings;
- (f) A waiver from Section 335-45.A which requires a landscaping plan to be prepared by a landscape architect;
- (g) A waiver from Section 335-53.D to allow the northern corner of the parking lot to be without curbing;
- (h) A waiver from Section 335-60.A and B from providing shade trees and a shade tree easement.

WHEREAS, the application was presented before the Planning Board at a public hearing on May 8, 2006 (1) in sworn testimony by Dominic D'Andrea, Sr., the managing member of the applicant, Dominic D'Andrea, Jr., a member of the applicant and Keith E. Conroy, P.E., the applicant's engineer; and (2) by the legal representation of John Kennedy, Esquire; and

WHEREAS, it appears that all jurisdictional and procedural requirements of applicable Borough Ordinances have been satisfied; and

WHEREAS, the Berlin Borough Planning Board has considered the application and the evidence and arguments submitted by the applicant in support thereof; and

WHEREAS, the Berlin Borough Planning Board has considered the recommendations and comments of its professional staff; and

WHEREAS, the Berlin Borough Planning Board (the "Board") after carefully considering the evidence and examining certain exhibits, has made the following factual findings and statements of reason:

1. Dominic D'Andrea, Sr., testified regarding the application. He gave an overview of the property surrounding the subject property. He indicated that he was going to be building 6 condominium units in a single 8400 square foot two-story building. He indicated the surrounding area is mostly commercial and therefore not conducive to single family housing. Each unit would have 2 bedrooms or a bedroom and a den. He intends to keep one-third of the site wooded/landscaped. He indicated that a condominium association has been created which will maintain the common areas and basins. He further testified that the units would be owner-occupied and be approximately 1400 to 1500 square feet in size. He also understood that the applicant would make one of the units an affordable housing unit subject to Borough Planner approval and COAH regulations. Mr. D'Andrea also testified concerning the density variance. He indicated that while they were asking for more units than what was permitted, the units that were being constructed were smaller units and would not have any greater impact on the school system. He indicated they would be installing a six foot high vinyl fence in the rear yard. It was agreed that the bulk variance called for in the Board Engineer's Review letter was not necessary. With regard to lighting and landscaping, he indicated that there would be security lighting that would be on a timer from dusk until dawn.

2. Mr. Conroy testified concerning the trash enclosure and indicated it would hold 6 receptacles and 6 recycling bins for each of the 6 units. He also testified that there were 15 parking spaces proposed. Each unit would have 2 parking spaces reserved to it and there would be 3 parking spaces for visitors. Mr. Conroy also went over the internal traffic circulation and pedestrian access and testified that in his professional opinion that it was a safe and efficient access plan.

3. The Board opened the hearing to the public but no public comment was received.

4. The following documents and exhibits are incorporated herein by reference:

(a) A Plan entitled, "Preliminary and Final Site Plan-Proposed Residential Condominiums for DRD Developers, LLC" dated July 13, 2005, last revised March 15, 2006, prepared by Keith Conroy Engineers consisting of seven (7) pages;

(b) A photocopy of a photograph of the existing site taken during the winter of 2005-2006 marked as Exhibit A-1 at the time of the hearing;

(c) A portion of the Berlin Borough Zoning map showing the subject properties in the surrounding areas and highlighted with the different uses and marked as Exhibit A-2 at the time of the hearing;

(d) The side elevation of the proposed building marked as Exhibit A-3 at the time of the hearing;

(e) A rendering of the proposed condominium structure marked as Exhibit A-4 at the time of the hearing;

(f) A Deed of Consolidation dated March 28, 2006;

(g) A memorandum from the Berlin Fire Marshal dated March 31, 2006 consisting of one (1) page endorsing the project;

(h) Memorandums from the Berlin Tax Assessor dated April 10, 2006 (1 page) and April 19, 2006 (1 page);

(i) Master Deed and By-Laws of the proposed Condominium Association;

(j) Stormwater drainage calculations prepared by Keith E. Conroy, P.E. dated July 13, 2005 and last revised November 10, 2005;

(k) The Board engineer's review letter dated April 25, 2006 consisting of six (6) pages;

5. The subject property is located in the R-2 High Density Residential district.

6. In considering the application, the Board determined that there were special reasons to grant the use variance for the style of the condominiums being proposed as well as a density variance in that it promoted a desirable, visual environment and represented a better planning alternative than the uses that would be allowed.

7. The Board also determined that the use variance and density variance could be granted without substantial detriment to the public good. The Board analyzed the character of existing property and its immediately surrounding properties in the neighborhood in general. In doing so, the Board noted that the surrounding area was not conducive to single family homes and that the proposed condominium units while greater than the density permitted were smaller units and would not have any greater impact on the school system. Furthermore, the Board found that the proposed condominium unit building is proportionate to the site.

8. The Board also determined that the grant of the use variance and density variance would not substantially impair the intent and purposes of the Master Plan and Zoning ordinance. In doing so, the Board noted that the R-2 zone is a high density residential district and but for the style of the condominium building it would be a permitted use. In addition, the Board noted that due to the size of the proposed condominium units and the fact that they were going to be owner-occupied the density variance would not substantially impair the intent and purpose of the Master Plan and Zoning ordinance.

9. Based upon all of the foregoing, the Berlin Borough Planning Board concludes that the applicant has satisfied the positive and negative criteria for the grant of the use variance and the density variance.

WHEREAS, upon motion duly made and seconded to grant the application for preliminary major site plan approval and final major site plan approval together with the requested use variance, density variance and waivers, the Board voted in favor of granting the application subject to certain conditions mentioned hereinafter.

NOW, THEREFORE, BE IT RESOLVED, by the Berlin Borough Planning Board, that the said application for preliminary major site plan approval and final major site plan approval together with the requested use variance and density variance and waivers, shall be and are hereby granted specifically subject however, to the testimony, representations and stipulations of the applicant, its attorney and witnesses at the time of the hearing and is subject to the following conditions:

1. The applicant shall comply with all of the conditions as set forth in the Board engineer's review letter dated April 25, 2006 except that the bulk variance is not necessary.

2. The condominium units shall be owner-occupied and a provision regarding same shall be included in the Master Deed subject to the Board Solicitor's review and approval.

3. One of the condominium units shall be an affordable housing unit subject to the review and approval of the Borough planner and consistent with COAH regulations.
4. There is no signage being approved with this application other than the number "45" being placed on the side elevation of the proposed building.
5. The applicant shall install a 6 foot high vinyl stockade fence in the rear-yard area.
6. The pole-mounted lighting shall be placed on a timer such that the lighting shall be limited to the period from dusk until dawn.
7. The applicant shall create a homeowner's association requiring the association to own, operate and maintain the common areas and basin which said homeowner's association documents will indicate that the units are to be owner occupied with prohibitions on renting and that there will be enforcement provisions granted to the Borough of Berlin in the event that the homeowner's association fails to maintain the common areas and basin and otherwise act consistent with its governing documents and by-laws, all of which shall be subject to the review and approval of the Board Solicitor.
8. The applicant shall comply with all of the recommendations of the Berlin Borough Fire Marshal.
9. The applicant shall comply with all of the recommendations of the Berlin Borough Tax Assessor.
10. The condominium units shall be limited to two bedrooms or a bedroom and a den and a provision in the governing documents of the homeowner's association shall provide for same.
11. The applicant shall obtain all required outside agency approvals.
12. The applicant shall promptly pay any professional staff fees billed, in excess of the required application escrows, or file a written protest with the Borough Business Administrator within seven (7) days of receipt of a final voucher from the Borough.
13. These General Conditions of Approval and any additional conditions of approval, if any, shall be binding upon the applicant, the owner, developer, and any successors and/or assigns of them.
14. The applicants shall obtain approval from any other county, state or municipal agency having jurisdiction over the application, including, but not limited to, the Camden County Board of Health, the Camden County Planning Board, Camden County Soil Conservation District, New Jersey Department of Transportation, and the Pinelands Commission.
15. The applicant has submitted certain plans and documents which were accepted by the Planning Board as part of its application and further made certain representations and provided

testimony at the time of the public hearing, all of which has been relied upon by the Planning Board in making its determination. Should there be any material deviation from said documents, plans, representations or testimony or from any conditions contained herein, then the Planning Board may, upon notice to the applicant and an opportunity to be heard, elect to rescind its approval.

16. Any improvement(s) to be constructed as a result of the Berlin Borough Planning Board approving this application shall be constructed and operated in full compliance with the Uniform Construction Code, Code of the Borough of Berlin, the Revised Statutes of the State of New Jersey and any other applicable county and/or federal law.

17. The applicant/owner is responsible for obtaining all zoning and/or building permits and approvals necessary to construct the project/development approved herein.

18. The applicant/owner is hereby advised that this application and plan have not been reviewed for conformance with the Americans With Disabilities Act (ADA). It is the responsibility of the applicant/owner to conform to said legislation.

19. If the above application involves the granting of a final subdivision or site plan approval, the Borough Business Administrator, Chairperson and Secretary of the Berlin Borough Planning Board shall not sign the final subdivision plan or final site plan nor shall any zoning permit issue until the applicant has demonstrated that all conditions of the final approval have been satisfied.

20. If a final approval has been granted, the applicant shall submit to the Berlin Borough Planning Board Engineer for his review a minimum of 10 complete sets of plans which shall incorporate all of the revisions that have been made conditions of this approval.

21. Performance guarantees (complying with N.J.S.A. 40:55D-53) shall be posted with the Borough for the site and utility improvement installations. These guarantees shall be effective for both the time duration required for their installation, and upon completion to check for compliance with the approved plan prior to a certificate of compliance and certificate of occupancy being issued. (The applicant's engineer shall provide a cost estimate of the proposed site improvements, excluding building costs.)

22. Inspection fees shall be posted with the Borough for site and utility improvement inspections which are to be performed by the municipal engineer to check for compliance with the approved plan prior to a certificate of compliance and certificate of occupancy being issued. The applicant shall post the required inspection fee deposit with the application for a building permit.

23. The applicant/owner is responsible for obtaining all the permits and approvals necessary to construct the project/development and the variance improvements. (Copies of all permits and approvals shall be filed with the Board.)

24. A two (2) year maintenance guaranty (complying with N.J.S.A. 40:55D-53) in the amount of 15% of the cost of improvements shall be provided to the Borough upon acceptance of any improvements by the Borough.

25. It is the ultimate responsibility of the applicant/owner to construct the necessary improvements in accordance with the Borough standards and to offer said improvements to the Borough in proper condition and as approved. All damaged and/or defective improvements shall be properly repaired and/or replaced.

26. All improvements are subject to inspection by the Borough. No site clearing or construction is to begin without proper notification to the Borough Engineer.

27. All street name signs, stop signs, miscellaneous traffic signs, etc. are to be installed by the applicant/owner upon construction of a street's hard surface base course and/or upon the direction of the Borough.

28. The developer/owner shall construct the required improvements within two (2) years (or as determined by the Borough) of the final approval date, or the Borough may elect to construct the improvements at the expense of the developer/owner.

29. All municipal utility easements shall be expressly dedicated to the Borough of Berlin.

30. As appropriate, the developer/owner shall prepare the necessary deeds or agreements conveying such real estate, right-of-ways, easements, improvements, etc. to the Borough for acceptance by the Borough Council. Upon final approval and prior to the issuance of a zoning permit, such conveyances shall be done by Deed and recorded in the county clerk's office, after having been reviewed and approved by the Borough Engineer and Board Attorney.

31. The stormwater management facilities shall be constructed immediately upon the initial development of the property and completed to the extent necessary to properly manage the stormwater run-off in accordance with the parameters of the design and within the intent of the approval of the Board.

32. No deed restrictions may exist in regard to this property/development, except those reviewed and included in the Board's approval.

33. A permit shall be obtained from the zoning officer after final approval and/or prior to any site clearing and/or construction.

34. The developer/owner shall continue to properly maintain all improvements of the development including but not limited to streets, storm sewer, drainage swales, etc. and shall sweep the streets, clean the storm sewers, etc. on a monthly basis, or as may be necessary. This shall continue until the improvements are accepted by the Borough.

35. The developer/owner shall clean all storm sewer facilities and other such improvements as necessary prior to their acceptance, with final as-built certifications and plans being provided by the developer/owner's licensed professional engineer which indicate compliance with the approved plan, including the stormwater drainage system. All improvements shall be offered in proper and good condition. All damaged improvements shall be repaired and/or replaced to the satisfaction of the Borough.

36. The public road right-of-ways within the development shall not be used as storage areas or "staging" areas for the construction of neither buildings nor site improvements.

37. The final pavement surfacing of roadways shall not be installed on roadways used for construction traffic. The final pavement surfacing of roadways shall not be installed on any roadway until all repairs have been made to the various improvements within the roadway/right-of-way area and it is determined that further damage to such roadway improvements due to construction or construction traffic is not anticipated. The Borough may, at its discretion, determine when final roadway surfacing may occur.

38. The developer/owner shall provide the Borough Zoning Officer and Borough Engineer 48 hours advance notice prior to any construction, including site clearing, being done. The notification shall include the following information:

- (a) Project Application Number
- (b) Project Name
- (c) Project Location (Street, Block, Lot)
- (d) Owner and Developer's Name, Address and Telephone Number
- (e) Owner/Developer's Contact Person, Address, Telephone Number
- (f) Expected Start Date

39. The applicant/owner is to be advised that the development of this property is to proceed in accordance with the approved plans and it is his responsibility to do so and obtain all necessary permits, inspections and other approvals which may be necessary to ultimately obtain a certificate of occupancy, and/or acceptance of the improvements.

40. Landscaping shall be maintained on a continuing basis as a condition of approval and the certificate of occupancy.

41. The inspection and testing by the Borough of the work done by the developer is solely for the benefit of the Borough to determine the general quality of materials and workmanship. While the developer may avail himself of the Borough's testing/inspection data, any decisions made by the developer as a result of the Borough's test/inspection information shall be made at the developer's own risk. The developer has the right to conduct similar tests and inspections at his own expense to satisfy his need for information and data pertaining to materials and workmanship.

42. During construction of the development's roadway, manhole castings, valve boxes, inlet castings (except curb piece type), etc. shall be set flush with the roadway surface to avoid

potential damage to vehicles and other public works equipment, such as snow plows. Then, just prior to the construction of the final roadway surface, the castings shall be adjusted and set to final grade.

43. The applicant is responsible for complying with the terms and conditions of the use variance previously granted by the Berlin Borough Planning Board.

44. Whenever any application for final major site plan or subdivision and planned and cluster development approval is approved subject to specified conditions intended to be fulfilled before the approval becomes effective ("conditions precedent"), said conditional approval shall lapse and become null and void unless all specified conditions precedent are fulfilled within ninety-five (95) days of the date of conditional approval.

45. To direct vehicular traffic at the site and per the New Jersey Department of Transportation's review letter dated July 19, 2005, left turns are prohibited at the Route 30 driveway.

46. The fulfillment of all conditions precedent shall be reported, in writing, by the applicant to the secretary of the reviewing board granting such conditional approval, and the secretary may cause such reports to be verified in an appropriate manner.

47. Only upon fulfillment of all conditions precedent shall any subdivision plan be signed and/or any required building or zoning permit be issued. Nothing contained herein shall be construed as preventing the reviewing board, upon the submission of an application, for good cause shown, from granting an extension of time from the original ninety-five (95) days for the fulfillment of all conditions precedent.

BE IT FURTHER RESOLVED, that certified copies of this resolution be forwarded to the applicant, Borough Clerk, Borough Construction Official, Borough Tax Assessor, and Zoning Officer.

RECORD OF VOTE						
BOARD	AYE	NAY	Abstain	Absent	Motion Made By	Second
Jacob J. Gangluff, Jr., Chairman						
Mayor Joseph Keskes						
Councilman Nicholas Maccaroni						
Michael Weissman, Vice Chairman						
Daniel R. Olier						
Joseph Sahina						
James Bilella						
Glen Behnke						
Anita Hahn						
Joseph Adolf						

I, Valerie Tarus, Secretary of the Planning Board of the Borough of Berlin, County of Camden and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the said Board at a meeting held at the Municipal Building, 59 South White Horse Pike, Berlin, New Jersey on the _____ day of _____, 2006.

VALERIE TARUS, Secretary
BERLIN BOROUGH PLANNING BOARD

JACOB J. GANGLUFF, JR., Chairman